TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM [redacted] 1920

No. [redacted] 236

C. R. PRIVETT, JOHN O. MITCHELL, AND J. E. CROSBIE, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, H. R. WILCOX, AND OIL PRODUCTION COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED FEBRUARY 8, 1921.

(27,457)

(27,457)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 702.

C. R. PRIVETT, JOHN O. MITCHELL, AND J. E. CROSBIE, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, H. R. WILCOX, AND OIL PRODUCTION COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1919, of said Court, before the Honorable Walter H. Sanborn, Circuit Judge, and the Honorable Thomas C. Munger and the Honorable Frank A. Youmans, District Judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to-wit: on the seventh*teenth* day of September, A. D. 1918, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein C. R. Privett, et al., were Appellants, and the United States of America, et al., were Appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE RALPH E. CAMPBELL, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

UNITED STATES OF AMERICA, - - - - - - - - *Plaintiff,*

Equity ***vs.*** **No. 2169**

W. E. PRIVETT, C. R. PRIVETT, H. R. WILCOX, OIL PRODUCTION COMPANY, a Corporation, JOHN O. MITCHELL and J. E. CROSBIE, - - - - - *Defendants.*

C. R. PRIVETT, JOHN O. MITCHELL and J. E. CROSBIE,
Appellants,

vs.

UNITED STATES OF AMERICA, H. R. WILCOX and OIL PRODUCTION COMPANY, *Appellees.*

In the United States District Court for the Eastern District of Oklahoma. United States of America, Complainant, v. W. E. Privett, C. R. Privett, H. R. Wilcox, Oil Production Company, a Corporation, John O. Mitchell and J. E. Crosbie, Defendants. No. ———.

Bill of Complaint.

To the Honorable Ralph E. Campbell, Judge of the United States District Court for the Eastern District of Oklahoma:

The United States of America by D. H. Linebaugh, United States District Attorney for the Eastern District of Oklahoma, and Archibald Bonds, Special Assistant to the United States District Attorney, under and by direction of the Honorable T. W. Gregory, Attorney General of the United States,

brings this bill upon the request of the Honorable Franklin K. Lane, Secretary of the Interior of the United States, against the defendants, W. E. Privett, C. R. Privett, H. R. Wilcox, Oil Production Company, a corporation, John O. Mitchell and J. E. Crosbie, who are citizens of the State of Oklahoma and reside in the Eastern District thereof, and may be found therein, and thereupon your complainant says:

I.

Your complainant, upon its own behalf and on behalf of Samuel H. Brown, states that Samuel H. Brown is a son of Madison H. Brown, a duly enrolled citizen by blood of the Creek Nation of Indians opposite roll No. 4088, being enrolled as a one-half blood Indian, and as such citizen of the Creek Nation received an allotment of land therein and selected a homestead from said allotment which is described as the

> Northeast quarter of the Southeast quarter of Section Four (4), Township Sixteen (16) North, Range Thirteen (13) East of the Indian Base and Meridian;

that the said Madison H. Brown died on or about September 29, 1911, leaving surviving issue born subsequent to March 4, 1906, to-wit:

> Samuel H. Brown, born April 23, 1906;

and that by reason of the death of the said Madison H. Brown and the birth of Samuel H. Brown since March 4, 1906, being a three-quarter blood Indian, the homestead of Madison H. Brown became the property of and is now the property of the said Samuel H. Brown to the extent that the same shall remain for the use and support of said Samuel H. Brown during his life until April 26, 1931; and that the said Samuel H. Brown is now living.

II.

Complainant further states that the defendants herein are asserting and claiming some right, title and interest in the above described land and now hold some pretended claim thereto by virtue of certain instruments which are matters of record in the County of Tulsa, where said land is located, and which constitute clouds upon the title to said land.

III.

That the instruments of conveyance which have been executed in violation of the rights of the complainant and of the rights of the said Samuel H. Brown, and held by the defendants herein are more particularly described as follows, to-wit:

> A Warranty Deed executed by Esther M. Brown and husband to the defendant W. E. Privett, attempting to

convey the lands herein described, dated October 24, 1911; filed for record October 25, 1911, and recorded in the Register of Deeds Office of Tulsa County, in Book 108, at page 248. Consideration $150.00.

Rental Contract executed by Cilla Brown to W. E. Privett for a term of five years. Consideration $1.00. Dated October 24, 1911, and recorded in Tulsa County, October 25, 1911, in Book 115, page 168.

Warranty Deed executed by Cilla Brown to W. E. Privett, consideration $150.00. Dated October 24, 1911. Filed for record in the Register of Deeds' office, October 25, 1911, Tulsa Co., and recorded in Book 108, page 246.

Warranty Deed from Cilla Brown to W. E. Privett. Consideration $150.00. Dated October 24, 1911. Filed for record in the office of the Register of Deeds of Tulsa County, November 7, 1911, and recorded in Book 108, page 267.

Order of Court of Tulsa County, Oklahoma, dated November 10, 1911, approving the deed last above mentioned, from Cilla Brown to W. E. Privett, dated October 24, 1911; said Order of the County Court being recorded in the office of the Register of Deeds of Tulsa County, in Book 115, page 358.

Guardian's Deed executed by Cilla Brown, guardian of Samuel H. Brown, a minor, to W. E. Privett, attempting to convey the land herein described. Consideration $150.00. Dated April 3, 1912. Filed for record with the Register of Deeds of Tulsa County on April 5, 1912, and recorded in Book 125, at page 84.

Order of Court confirming sale of said land by the County Court of Tulsa County, to said W. E. Privett, dated April 4, 1912, and recorded in the Register of Deeds' office for Tulsa County, in Book 77, page 434.

Warranty Deed executed by W. E. Privett to C. R. Privett. Consideration $1.00. Dated October 1, 1912, filed for record in the office of the Register of Deeds for Tulsa County, October 16, 1912, and recorded therein in Book 136, at page 678.

Oil and Gas Lease from C. R. Privett to H. R. Wilcox, for a term of five years, dated January 18, 1913, filed for record in the office of the Register of Deeds for Tulsa County, January 19, 1913, in book 129, page 21.

Assignment of the above mentioned lease by H. R. Wilcox to the Oil Production Company, dated January 25, 1913. Recorded in Book 126, page 504.

Warranty Deed from C. R. Privett and wife to John O. Mitchell and J. E. Crosbie; consideration $1000.00, ex-

ecuted August 2, 1913, filed for record in the Register of Deeds' office of Tulsa County, August 11, 1913, and recorded therein in Book 119, page 618.

Each of the above instruments seek to encumber and convey the land herein described.

IV.

Complainant further states that the lands herein described are restricted and incapable of alienation unless restrictions thereon imposed be removed by the Secretary of the Interior, which has never been done as to this land, and the parties so executing the above described instruments conveyed no interest by the execution of said instruments and the parties who now claim interest in and title to said land acquired no interest by virtue of the execution of said deeds for the reason said land has at all times since the death of Madison H. Brown been held for the use and support of said Samuel H. Brown, and the deeds so remaining on record in Tulsa County, Oklahoma, constitute clouds upon the title and *an* encumbrances upon the land herein described and is a hindrance to complainant in the discharge of its duties in the premises and the same should be cancelled and the title quieted for the reasons herein stated. Complainant further states it has no adequate remedy at law and prays that writ of subpoena issue against said defendants, commanding them at a day certain and under certain penalties to personally be and appear before the court and to answer said bill of complaint but not under oath, answer under oath being expressly waived.

Your complainant further prays that upon final hearing of this cause, this honorable court by its decree show, adjudge and decree that the several deeds and transactions herein set out, and attempted conveyances referred to and described, covering the lands herein mentioned, to be void and of no binding force and effect as against the complainant, and against the said Samuel H. Brown; that each of said deeds be cancelled and that the defendants be decreed to have no right, title or interest in and to the said land and that the defendants take nothing by virtue of said deeds either against the complainant or the said Samuel H. Brown, and that the complainant be decreed by the court to be lawfully entitled to the possession of the land described herein, and that the complainant have such other and further relief as in equity and good conscience shall be deemed proper.

D. H. LINEBAUGH,
United States Attorney.

ARCHIBALD BONDS,
Special Assistant to the United States Attorney.

Endorsed: Filed Apr. 14, 1915. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 24th day of June, A. D. 1915, the defendant Oil Production Company filed Answer to the Bill of Complaint, which is in words and figures as follows:

Answer of Oil Production Company, a Corporation, to the Bill of Complaint in the Above Entitled Cause.

Now comes the above named defendant, Oil Production Company, a corporation, and for its answer to the bill of the complainant filed in this cause, says:

First Paragraph.

That this defendant admits that Samuel H. Brown is a son of Cilla Brown, and Madison H. Brown, now deceased; that said Madison H. Brown was a citizen by blood of the Creek Nation of Indians and duly enrolled opposite Roll No. 4088 as of one-half Indian blood and that as such citizen he was allotted and there was delivered to him during his lifetime a patent for the following described land, which was selected, allotted and patented to him as the homestead portion of his allotment, the following described real property situated in the Creek Nation, now County of Tulsa and State of Oklahoma, to-wit:

> The Northeast Quarter of the Southeast Quarter (NE¼ of SE¼) of Section Four (4), Township Sixteen (16) North, Range Thirteen (13) East of the Indian Base and Meridian, containing forty (40) acres more or less;

that the said Madison H. Brown died intestate during the month of September, 1911, leaving him surviving his widow, Cilla Brown, an enrolled full blood Creek Indian, No. 4089, an adult daughter, Esther M. Brown, an enrolled three-fourths blood Creek Indian, No. 4090, and a minor son, Samuel H. Brown.

This defendant further admits that it claims an interest in the oil and gas mining rights upon said premises under and by virtue of the assignment to it by H. R. Wilcox of the oil and gas mining lease executed to him by C. R. Privett, and all of his right, title or interest in and to the same, which lease is more specifically hereinafter described in this answer; and further admits that the warranty deeds, guardian's deed, order of court confirming sale, and oil and gas lease and assignment thereof were duly executed and delivered by the parties as alleged and set forth in said bill of complaint, and that said instruments were duly filed for record in Tulsa County, Okla-

homa, and recorded on the records in the office of the Register of Deeds for said County, as set forth in said bill of complaint.

Second Paragraph.

For its first defense herein this defendant specifically denies that said Madison H. Brown left him surviving any issue born subsequent to March 4, 1906, and specifically denies that said Samuel H. Brown was born subsequent to March 4, 1906, but alleges that said Samuel H. Brown was born during the month of February, 1906, and on or about the 23rd day of said month.

Said defendant further alleges that said allottee, Madison H. Brown, died on or about the 29th day of September, 1911, a citizen and resident of the County of Tulsa and State of Oklahoma, intestate, leaving him surviving as his sole and only heirs his said widow, Cilla Brown, his said daughter, Esther M. Brown, an adult, and his said minor son, Samuel H. Brown; that thereafter and on or about the 24th day of October, A. D. 1911, said Esther M. Brown, then being an enrolled three-fourths blood Creek Indian, together with her husband, Legus Brown, for a valuable consideration paid them, executed and delivered a warranty deed to W. E. Privett, conveying the real property above described, which deed was duly recorded in the office of the Register of Deeds for Tulsa County, Oklahoma, in Book 108, at page 248; that on said 24th day of October, 1911, said widow, Cilla Brown, an enrolled full blood Creek Indian, for a valuable consideration paid to her, executed and delivered to W. E. Privett a warranty deed conveying all of her undivided one-third interest in and to the real property hereinbefore described, which deed was thereafter and on November 3, 1911, duly approved and confirmed by the County Court in and for Tulsa County, Oklahoma, and filed for record in the office of the Register of Deeds for Tulsa County, Oklahoma, on November 7, 1911, and duly recorded in Book 108, at page 267, a certified copy of said order of approval of said County Court being duly recorded in the office of said Register of Deeds in Book 115, at page 358; that thereafter, and after due proceedings were had in accordance with the laws of the State of Oklahoma applicable thereto, in said County Court of Tulsa County, Oklahoma, said widow, Cilla Brown, was duly appointed guardian of the person and estate of her said minor son, Samuel H. Brown, and upon proper proceedings being had in said County Court in accordance with the laws of the State of Oklahoma said guardian was duly authorized by said County Court to sell and did sell unto said W. E. Privett the undivided one-third interest of said minor in and to the real property hereinbefore described for the sum of One Hundred Fifty Dol-

lars ($150.00), said sale being made on March 4, 1912, which was approved and confirmed by said County Court and a guardian's deed ordered executed by said guardian and delivered to said purchaser, W. E. Privett, and thereafter and on the 3rd day of April, 1912, said Cilla Brown, as the duly appointed, qualified and acting guardian of the estate of Samuel H. Brown, executed and delivered to said purchaser, W. E. Privett, a guardian's deed in accordance with the laws of the State of Oklahoma applicable thereto, conveying unto said grantee, his heirs and assigns, all the right, title and interest of said minor in and to the real property hereinbefore described, which guardian's deed was filed for record in the office of said Register of Deeds on April 5, 1912, and duly recorded in Book 125, at page 84; that all the conditions precedent and acts required by the laws of the State of Oklahoma to make valid said guardian's deed and proceedings upon which it was based were duly performed by said guardian, and the interest of said minor in said land passed to said grantee by virtue of the laws of said State; a certified copy of the order of confirmation of said court confirming said sale, being dated March 25, 1912, was duly filed for record in the office of said Register of Deeds and recorded in Book 77, at page 434.

That thereafter and on the 1st day of October, A. D. 1912, said W. E. Privett, an unmarried man, executed and delivered to C. R. Privett, for a valuable consideration, his warranty deed in writing whereby he sold and conveyed unto said grantee the real property hereinbefore described, which deed was duly filed for record in the office of said Register of Deeds on October 16, 1912, and duly recorded in Book 136, at page 678.

That thereafter and on or about the 8th day of January, 1913, said C. R. Privett, who was then the owner of and in the possession of said premises hereinbefore described, executed and delivered unto H. F. Wilcox of Tulsa, Oklahoma, an oil and gas mining lease thereon for a term of five years from said date and as long as oil or gas might be produced in paying quantities therefrom, reserving unto said lessor, as royalty, one-eighth of all oil produced and saved from said premises, which lease was duly filed for record in the office of said Register of Deeds on January 9, 1913, and duly recorded in Book 129, at page 21; a copy of which lease is hereto attached, marked "Exhibit A," and hereby made a part of this answer the same as though specifically set forth herein; that thereafter and on the 25th day of January, 1913, said lessee, H. F. Wilcox, for a cash consideration paid by this defendant, duly executed and delivered to this defendant his assignment in writing assigning all of his right, title and interest in and to said lease,

and by virtue of said assignment this defendant became the owner of said oil and gas lease and leasehold estate for oil and gas mining purposes thereby created, and since said date this defendant has been and is now the owner of the same, said assignment being duly filed for record in the office of said Register of Deeds on January 25, 1913, and duly recorded in Book 126, at page 504, on the records in said office.

That thereafter and on the 2nd day of August, 1913, said C. R. Privett and wife executed and delivered their warranty deed in writing, whereby for a valuable consideration they sold and conveyed said land to the above named defendants, John O. Mitchell and J. E. Crosbie, which deed was filed for record August 11, 1913, in the office of said Register of Deeds and duly recorded in Book 119, at page 618, on the records in said office, and said last named defendants entered into the possession of said land and ever since said date have been and are now the owners of said real property hereinbefore described.

That this defendant has duly kept and performed all the covenants and conditions contained and set forth in said oil and gas mining lease, and that said lease is now in full force and effect and binding upon this defendant and said present owners of the land described therein, being the land hereinbefore described in this answer; that this defendant is now operating said premises for oil and gas mining purposes, and has expended upon and invested in drilling and operating expenses upon said property prior to the commencement of this suit approximately the sum of Twenty Thousand Dollars ($20,000.00).

Third Paragraph.

For a second and further defense herein this defendant alleges that at the time the assignment of the oil and gas mining lease hereinbefore mentioned covering the property hereinbefore described was executed and delivered to this defendant by said H. R. Wilcox, this defendant paid for assignment of said lease unto one Ross Sigler, as the duly authorized agent for H. R. Wilcox, and who was fully authorized by said H. R. Wilcox to collect payment for said assignment for and on his behalf as his said agent, the sum of Four Hundred Dollars ($400.00) in cash, and this defendant paid said sum for said lease and took said assignment thereof without any knowledge or notice whatsoever of the claim now made by said complainant that said Samuel H. Brown was born after March 4, 1906, but relied upon the affidavits and statements of Cilla Brown, the mother of said Samuel H. Brown, and Esther M. Brown, the adult sister of said Samuel H. Brown, both of whom swore and stated that said minor was born prior to March 4, 1906,

and this defendant alleges that the purchase of the said assignment by this defendant was made and the consideration therefor fully paid as aforesaid, and said assignment taken in good faith without any knowledge or notice whatsoever on the part of this defendant of the claim now made by said complainant, with reference to the date of birth of said Samuel H. Brown, and without any knowledge of any matters or things from which notice of such claim might have been obtained, and this defendant therefore alleges that it is and was a bona fide purchaser of said lease for a good and valuable consideration without notice, and that the consideration so paid as aforesaid was the full value of said lease at the time of the purchase of the same by this defendant, all as hereinbefore alleged herein.

Wherefore, having fully answered, this defendant prays that the complainant's bill may be dismissed with costs to this defendant in this behalf wrongfully sustained.

EDW. H. CHANDLER,
Attorney for Defendant, Oil Production Company.

(Clerk's Note: Exhibits to this Answer omitted by order of praecipe filed herein.)

Endorsed: Filed Jun. 24, 1915. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 14th day of February, A. D. 1916, the defendants John O. Mitchell and J. E. Crosbie filed Answer herein, which is in words and figures as follows:

Answer of John O. Mitchell and J. E. Crosbie to the Bill of Complaint in the Above Entitled Cause.

Now comes the above-named defendants, John O. Mitchell and J. E. Crosbie, and for their answer to the bill of the complainant filed in this cause, say:

First Paragraph.

That these defendants admit that Samuel H. Brown is a son of Cilla Brown, and Madison H. Brown, now deceased; that said Madison H. Brown was a citizen by blood of the Creek Nation of Indians and duly enrolled opposite Roll No. 4088 as of one-half Indian blood and that as such citizen he was allotted and there was delivered to him during his lifetime a patent for the following described land, which was selected, allotted and patented to him as the homestead portion of his allotment, the following described real property

situated in the Creek Nation, now County of Tulsa and State of Oklahoma, to-wit:

> The Northeast Quarter of the Southeast Quarter (NE¼ of SE¼) of Section Four (4), Township Sixteen (16) North, Range Thirteen (13) East of the Indian Base and Meridian, containing forty (40) acres, more or less;

that the said Madison H. Brown died intestate during the month of September, 1911, leaving him surviving his widow, Cilla Brown, an enrolled fullblood Creek Indian No. 4089, an adult daughter, Esther M. Brown, an enrolled three-fourths blood Creek Indian No. 4090, and a minor son, Samuel H. Brown.

These defendants further admit that they claim an interest in the said premises and claim to be the owners thereof under and by virtue of the deed to them by C. R. Privett and wife, which deed is more specifically hereinafter described in this answer; and further admit that the said warranty deeds, guardian's deed, order of court confirming sale, and oil and gas lease and assignment thereof were duly executed and delivered by the parties as alleged and set forth in said bill of complaint, and that said instruments were duly filed for record in Tulsa County, Oklahoma, and recorded in the office of the Register of Deeds for said County, as set forth in said bill of complaint.

Second Paragraph.

For their first defense herein, these defendants specifically deny that said Madison H. Brown left him surviving any issue born subsequent to March 4, 1906, and specifically deny that said Samuel H. Brown was born subsequent to March 4, 1906, but allege that said Samuel H. Brown was born during the month of February, 1906, and on or about the 23rd day of said month.

Said defendants further allege that said allottee, Madison H. Brown, died on or about the 29th day of September, 1911, a citizen and resident of the County of Tulsa and State of Oklahoma, intestate, leaving him surviving as his sole and only heirs his said widow, Cilla Brown, his said daughter, Esther M. Brown, an adult, and his said minor son, Samuel H. Brown; that thereafter and on or about the 24th day of October, A. D. 1911, said Esther M. Brown, then being an enrolled three-fourths blood Creek Indian, together with her husband, Legus Brown, for a valuable consideration paid them, executed and delivered a warranty deed to W. E. Privett conveying the real property above described, which deed was duly recorded in the office of the Register of Deeds for Tulsa

County, Oklahoma, in Book 108, at page 248; that on said 24th day of October, 1911, said widow, Cilla Brown, an enrolled fullblood Creek Indian, for a valuable consideration paid to her, executed and delivered to W. E. Privett a warranty deed conveying all of her undivided one-third interest in and to the real property hereinbefore described, which deed was thereafter and on November 3, 1911, duly approved and confirmed by the County Court in and for Tulsa County, Oklahoma, and filed for record in the office of the Register of Deeds for Tulsa County, Oklahoma, on November 7, 1911, and duly recorded in Book 108, at page 267, a certified copy of said order of approval of said County Court being duly recorded in the office of said Register of Deeds in Book 115 at page 358; that thereafter, and after due proceedings were had in accordance with the laws of the State of Oklahoma applicable thereto, in said County Court of Tulsa County, Oklahoma, said widow, Cilla Brown, was duly appointed guardian of the person and estate of her said minor son, Samuel H. Brown, and upon proper proceedings being had in said County Court in accordance with the laws of the State of Oklahoma said guardian was duly authorized by said County Court to sell and did sell unto said W. E. Privett the undivided one-third interest of said minor in and to the real property hereinbefore described for the sum of One Hundred Fifty Dollars ($150.00), said sale being made on March 4, 1912, which was approved and confirmed by said County Court and a guardian's deed ordered executed by said guardian and delivered to said purchaser, W. E. Privett, and thereafter and on the 3rd day of April, 1912, said Cilla Brown, as the duly appointed, qualified and acting guardian of the estate of Samuel H. Brown, executed and delivered to said purchaser, W. E. Privett, a guardian's deed in accordance with the laws of the State of Oklahoma applicable thereto, conveying unto said grantee, his heirs and assigns, all the right, title and interest of said minor in and to the real property hereinbefore described, which guardian's deed was filed for record in the office of said Register of Deeds on April 5, 1912, and duly recorded in Book 125, at page 84; that all the conditions precedent and acts required by the laws of the State of Oklahoma to make valid said guardian's deed and proceedings upon which it was based were duly performed by said guardian, and the interest of said minor in said land passed to said grantee by virtue of the laws of said State; a certified copy of the order of confirmation of said court confirming said sale, being dated March 25, 1912, was duly filed for record in the office of said Register of Deeds and recorded in Book 77, at page 434.

That thereafter and on the 1st day of October, A. D. 1912, said W. E. Privett, an unmarried man, executed and delivered to C. R. Privett, for a valuable consideration, his warranty deed in writing whereby he sold and conveyed unto said grantee the real property hereinbefore described, which deed was duly filed for record in the office of said Register of Deeds on October 16, 1912, and duly recorded in Book 136, at page 678.

That thereafter and on or about the 8th day of January, 1913, said C. R. Privett, who was then the owner of and in the possession of said premises hereinbefore described, executed and delivered unto H. F. Wilcox of Tulsa, Oklahoma, an oil and gas mining lease thereon for a term of five years from said date and as long as oil or gas might be produced in paying quantities therefrom, reserving unto said lessor, as royalty, one eighth of all oil produced and saved from said premises, which lease was duly filed for record in the office of said Register of Deeds on January 9, 1913, and duly recorded in Book 129, at page 21; that thereafter and on the 25th day of January, 1913, said lessee, H. F. Wilcox, for a cash consideration paid by the defendant Oil Production Company, duly executed and delivered to said defendant his assignment in writing, assigning all of his right, title and interest in and to said lease, and by virtue of said assignment said defendant became the owner of said oil and gas lease and leasehold estate for oil and gas mining purposes thereby created, and since said date said defendant has been and is now the owner of the same, said assignment being duly filed for record in the office of said Register of Deeds on January 25, 1913, and duly recorded in Book 126, at page 504, on the records in said office.

That thereafter and on the 2nd day of August, 1913, said C. R. Privett and wife executed and delivered their warranty deed in writing, whereby for a valuable consideration they sold and conveyed said land to these defendants, John O. Mitchell and J. E. Crosbie, which deed was filed for record August 11, 1913, in the office of said Register of Deeds and duly recorded in Book 119, at page 618, on the records in said office, and said defendants entered into the possession of said land and ever since said date have been and now are the owners of said real property hereinbefore described, a copy of which said deed, together with all the endorsements thereon, is made a part hereof, filed herewith and marked Exhibit "A."

Third Paragraph.

For a second and further defense herein these defendants allege that at the time the warranty deed hereinbefore

mentioned covering the property hereinbefore described was executed and delivered to these defendants by said C. R. Privett and wife, these defendants paid for said deed unto said C. R. Privett the sum of One Thousand Dollars ($1,000.00) cash, and these defendants paid said sum for said deed without any knowledge or notice whatsoever of the claim now made by said complainant; that said Samuel H. Brown was born after March 4, 1906, but relied upon the affidavits and statements of Cilla Brown, the mother of said Samuel H. Brown, and Esther M. Brown, the adult sister of said Samuel H. Brown, both of whom swore and stated that said minor was born prior to March 4, 1906, and these defendants allege that the purchase of the said land by these defendants was made and the consideration therefor fully paid as aforesaid, and said deed taken in good faith without any knowledge or notice whatsoever on the part of these defendants of the claim now made by said complainant, with reference to the date of birth of said Samuel H. Brown, and without any knowledge of any matters or things from which notice of such claim might have been obtained, and these defendants therefore allege that they were and are the bona fide purchasers of said land for a good and valuable consideration without notice, and that the consideration so paid as aforesaid was the full value of said land at the time of the purchase of the same by these defendants, all as hereinbefore alleged herein.

Wherefore, having fully answered, these defendants pray that the complainant's bill may be dismissed with costs to these defendants in this behalf wrongfully sustained.

ABBOTT & PECK,
Attorneys for Defendants John O. Mitchell and J. E. Crosbie.

[Clerk's Note: Exhibits to this answer omitted by order of praecipe filed herein.]

Endorsed: Filed Feb. 14, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 5th day of April, A. D. 1916, the defendant Oil Production Company filed Supplemental Answer herein, which is in words and figures as follows:

Supplemental Answer of Oil Production Company, a Corporation, to the Bill of Compiaint in the Above Entitled Cause.

Now comes the defendant, Oil Production Company, a corporation, and for its supplemental answer herein, in conformity with Equity Rule No. 34, says that it has certain other

and additional defenses which have arisen since the filing of its original answer herein, and for its supplemental answer it alleges as follows:

That on the 25th day of September, 1915, Legus Brown, guardian of Samuel H. Brown, a minor, signed, acknowledged and delivered to this defendant an oil and gas mining lease, covering the northeast quarter of the southeast quarter of Section 4, Township 16 North, Range 13 East of the Indian Meridian, and containing 40 acres, on the form prescribed by the Secretary of the Interior, a copy of which lease is filed herewith as a part hereof, marked "Defendant's Exhibit No. 1." It says that said Samuel H. Brown is a three-fourths blood Creek Indian. It further says that on or about the 13th day of September, 1915, Esther M. Brown, a three-fourths blood Creek Indian, Roll No. 4080, and Legus Brown, her husband, and Cilla Brown, a fullblood Creek Indian, Roll No. 4089, as heirs of Madison H. Brown, deceased, signed, acknowledged and delivered a certain oil and gas mining lease, covering the northeast quarter of the southeast quarter of Section 4, Township 16 North, Range 13 East of the Indian Meridian, and containing 40 acres, a copy of which lease is filed herewith as a part hereof, marked "Defendant's Exhibit No. 2." Defendant further says that both lease No. 1 and lease No. 2 were duly approved by the Secretary of the Interior on February 14, 1916, and that this defendant has complied with all the terms, conditions and obligations of said leases and with all the terms, conditions and obligations of the Department of the Interior in reference to leases of this character.

Defendant further says that under the terms of each of these leases it is required to pay to the Superintendent for the Five Civilized Tribes 12 per cent of the gross proceeds of all oil extracted from the land described therein, such payment to be made at the time of sale or removal of the oil. It further says that under the lease set up in its original answer herein, and which was marked "Exhibit A," it was required to pay to the lessor therein named, or his successors in title, one-eighth part of all the oil produced and saved from said premises. It further says that it procured the leases attached to this supplemental answer for the purpose of protecting its title in the event the plaintiff herein was successful, and not for the purpose of waiving its rights in any way under the lease set up as "Exhibit A" in its original answer herein; but that, during the pendency of this litigation it will be required to pay a royalty under its original lease and another royalty of equal amount under the leases attached to this supplemental answer as Exhibits 1 and 2.

It says that it does not know and cannot know with certainty whether the plaintiff will prevail or whether the defendants will prevail in this litigation; that this litigaton may be protracted and a final decision may not be had herein for a long time to come; and it asks the court to appoint a receiver herein, and that it be permitted to pay its royalty to said receiver, and that in the event the United States prevails herein, then that said receiver be instructed to pay said royalty to the United States Indian Superintendent for the benefit of the lessors in said leases Nos. 1 and 2 attached hereto, and in the event the United States ultimately fails, that said receiver be instructed to pay said royalties to said John O. Mitchell and J. E. Crosbie, defendants herein, as their interest may appear by a final decree in this action.

It says that unless a receiver is appointed herein, it will be required, in order to keep its leases in force, to pay a royalty to its lessors under the lease set up in its original answer and to pay another and additional royalty of the same amount to the United States Indian Superintendent as provided in the leases attached hereto. It says that it would be unfair and inequitable to require it, during the pendency of this suit, to pay a double royalty, and that it would be further unfair and inequitable for it to be required to hazard the existence of its lease and leasehold estate by electing to which of its lessors it would pay the royalty interest pending this litigation. It says that the only interest it has in this litigation is under the various oil and gas mining leases referred to, and that under either lease it has a right to operate said property for oil and gas and to sell seven-eighths of the oil and gas obtained therefrom, or to convert the said seven-eighths to its own use and benefit; that it is producing oil on said land, and has been so producing the same for a long time, and that it is likely the lands covered by said leases will continue to produce oil in paying quantities for some time to come.

Wherefore, the premises considered, it prays that a receiver be appointed herein to collect and retain said royalties, and to pay the same out under order of this court, and that this defendant be protected in the enjoyment of its leasehold estate, and that on final hearing the court determine and establish its rights herein and quiet its title in said lease, and for all other equitable relief.

EDWARD H. CHANDLER,
JOHN R. WHEELER,
J. P. O'MEARA,
Solicitors for Defendant,
Oil Production Company.

State of Oklahoma, County of Tulsa—ss.

J. P. O'Meara being duly sworn, says that he is one of the solicitors for the defendant, Oil Production Company, and that its principal officer and agent is absent from the Eastern District; that he has read the foregoing supplemental answer, and that the facts therein stated are true.

J. P. O'Meara.

Subscribed and sworn to before me this ..... day of March, 1916.

.....
Notary Public.

My commission expires ....., 19...

(Clerk's Note: Exhibits to this Answer omitted by order of praecipe filed herein.)

Endorsed: Filed Apr. 5, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 5th day of April, A. D. 1916, the defendants John Mitchell and J. E. Crosbie filed Amendment to Answer herein, which is in words and figures as follows:

Amendment to Answer of Defendants John O. Mitchell and J. E. Crosbie.

The defendants, John O. Mitchell and J. E. Crosbie, by leave and permission of this Honorable Court first had and obtained, file this their amendment to their answer hereinbefore filed as Paragraph Four thereof, to-wit:

Fourth Paragraph.

These defendants incorporate herein all of the matters and things alleged in Paragraphs One, Two and Three of the said answer, and further state, that the land above described lies and is situate in the County of Tulsa and State of Oklahoma; that the Superior Court of Tulsa County is a court of general original jurisdiction and is and was at all times herein mentioned duly constituted and as such has and had at all times herein mentioned jurisdiction to try titles to lands lying and situate in the county and state aforesaid, and particularly it had jurisdicton to hear and try suits to quiet title to said lands; that on the 7th day of January, 1913, the said C. R. Privett hereinabove mentioned, commenced a suit in the Superior Court of Tulsa County, Oklahoma, by filing his petition therein on the 7th day of January, 1913, to quiet his title to the lands in question, which said suit is and was num-

hereof 920 and entitled "*C. R. Privett, Plaintiff*, v. *Esther M. Brown, Cilla Brown, Samuel H. Brown, a minor, and Cilla Brown, guardian for said Samuel H. Brown, a minor, Defendants;*" that the said C. R. Privett, plaintiff therein, is one and the same person as the said C. R. Privett to whom the said W. E. Privett conveyed the lands aforesaid by the warranty deed dated October 1, 1912; that the said defendant, Esther M. Brown, is one and the same person as the said Esther M. Brown, the daughter of Madison H. Brown, deceased, the allottee hereinbefore mentioned, who executed to said W. E. Privett hereinbefore mentioned, the grantor of said C. E. Privett, the warranty deed dated October 24, 1911, set out in said answer, conveying her right, title and interest in and to the land aforesaid, to the said W. E. Privett; that the said defendant, Cilla Brown, is one and the same person as the said Cilla Brown, who, on the 24th day of October, 1911, as hereinbefore set out, executed a warranty deed to the said W. E. Privett, conveying her undivided one-third interest therein, and that the said defendant, Samuel H. Brown, a minor, is one and the same person as the said Samuel H. Brown for and on whose behalf this action is brought by the United States, and that the said defendant Cilla Brown, guardian of said Samuel H. Brown, is the same person who executed for and on behalf of the said minor, Samuel H. Brown, the guardian's deed on April 3, 1912, as hereinbefore alleged.

Defendants further state that the suit aforesaid was to quiet the title of the said C. R. Privett to said land as against the defendants therein; that said defendants, and each of them, including said minor, Samuel H. Brown, were duly and legally summoned in said suit by personal service; that a guardian *ad litem* was by said court duly appointed for said minor defendant and filed answer therein as required by law, and that all of the said defendants duly answered in said suit; that on the 5th day of February, 1913, same being a regular judicial day of the January, 1913, term of said Superior Court of Tulsa County, Oklahoma, said court duly heard, tried and determined all of the issues in the above entitled cause; that one of the issues therein was the date of birth of the said Samuel H. Brown, which was a fact to be determined in said suit, and that on the day and date last aforesaid the said Superior Court of Tulsa County entered a decree in said suit, finding as a fact, among others, that Samuel H. Brown was born on the 23rd day of February, 1906, which was prior to March 4th, 1906, and not subsequent thereto, as alleged in the Bill of Complaint; a copy of which said decree is attached hereto, filed herewith, made a part hereof and marked Defendants' Exhibit "B."

These defendants state, that although the United States of America, the complainant in the instant case, was not a party to the said suit in the Superior Court of Tulsa County, Oklahoma, yet the complainant herein has no right, title, interest or estate in and to the land described in the Bill of Complaint, and has no right or authority to institute or maintain this suit, except upon the theory that the said minor, Samuel H. Brown, has some right, title, interest or estate in and to said land, and that the said Samuel H. Brown is the real party in interest herein, and the instant suit is in effect a suit brought by the United States of America for and on behalf of the said minor, Samuel H. Brown. That said Samuel H. Brown was a party to the said suit in the Superior Court of Tulsa County, Oklahoma, and all his rights in and to said land adjudicated therein; that all of the issues in this instant cause have been and were by the Superior Court of Tulsa County, in the suit above mentioned, duly tried, heard, found and determined against said Samuel H. Brown and in favor of the grantor of these defendants; that the judgment and the decree aforesaid is final and was not appealed from by the said defendant, Samuel H. Brown, or any of the said defendants, by reason whereof the issues herein are *res adjudicata.*

Wherefore, it is prayed, as in their original answer, that the Complainant's Bill may be dismissed with costs to these defendants in this behalf wrongfully sustained.

ABBOTT & PECK,
P. L. THURMAN,
Attorneys for Defendants, John O. Mitchell and J. E. Crosbie.

(Clerk's Note: Exhibits to this Amendment to Answer omitted by order of praecipe or record filed herein.)

Endorsed: Filed Apr. 5, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 5th day of April, A. D. 1916, the Complainant, United States of America, filed Motion to Strike the Amended Answer filed herein, which is in words and figures as follows:

Motion to Strike Defendants' Answer.

First.

Comes now the complainant, United States of America, and moves the Court to strike the amended answer of the de-

fendants John O. Mitchell and J. E. Crosbie, filed herein, for the reason that the judgment and order of the Superior Court of Tulsa County, pleaded by the defendants, is not at bar to the right of the complainant to recover.

Second.

That the complainant herein was not a party to said suit in the Superior Court of Tulsa County.

Third.

That said amended answer does not state facts sufficient to constitute a defense to complainant's bill, and does not state facts material to the issues in said cause.

ARCHIBALD BONDS,
Special Assistant to the United States Attorney.

Endorsed: Filed Apr. 5, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 5th day of April, A. D. 1916, the same being one of the days of the Tulsa, 1916, term of the United States District Court for the Eastern District of Oklahoma, court met pursuant to adjournment at Tulsa, Oklahoma. Present and presiding the Honorable RALPH E. CAMPBELL, Judge.

Among the proceedings had on this day is the following:

Order Striking Amendment to Answer of John O. Mitchell and J. E. Crosbie.

The above matter coming on to be heard on this the 5th day of April, 1916, the same being one of the days of the regular term of the United States Court for the Eastern District of Oklahoma, at Tulsa, Oklahoma, upon motion of the complainant to strike out the amendment to the answer of said defendants, John O. Mitchell and J. E. Crosbie, and the complainant being represented by Archibald Bonds, Special Assistant to the United States District Attorney, and the defendants by Warren D. Abbott, their attorney, and the court being advised in the premises:

It Is Ordered by the Court that said motion to strike said amendment to the answer of the defendants be, and the same is hereby sustained, to which the defendants, John O. Mitchell and J. E. Crosbie ask and are allowed their exceptions.

RALPH E. CAMPBELL, *Judge.*

And, to-wit, on the 14th day of August, A. D. 1918, the following proceedings were had in this cause. Honorable RALPH E. CAMPBELL, Judge, presiding.

Journal Entry.

And now on this 14th day of August, A. D. 1918, pursuant to the announcement made by the court herein at the time of final argument and submission, July 17, 1918, this cause coming on for final hearing, determination and decree, the appearances being as at the last hearing, and the court having considered the evidence and the argument of counsel, and being fully advised in the premises, doth find and hold:

That the land described in the petition filed herein, to-wit:

The Northeast quarter of the Southeast quarter of Section four (4), Township sixteen (16) North, Range thirteen (13) East of the Indian Base and Meridian,

was allotted to Madison H. Brown, a one-half blood Creek Indian, as his homestead allotment; said Madison H. Brown died on or about the 29th day of September, 1911, and left as one of his heirs at law a minor son, Samuel H. Brown; that the said Samuel H. Brown was born subsequent to March 4, 1906; and that the deeds and instruments set out and attached to plaintiff's petition filed herein are void and of no effect and clouds upon the title of said land, and that the same should be cancelled;

It Is Therefore Ordered, Adjudged and Decreed by the court that the following described instruments mentioned and described in plaintiff's petition, purporting to convey the land described herein, to-wit:

A Warranty Deed executed by Esther M. Brown and husband to the defendant W. E. Privett, attempting to convey the lands herein described, dated October 24, 1911; filed for record October 25, 1911, and recorded in the register of deeds office of Tulsa County, in Book 108 at page 248. Consideration $150.00.

Rental Contract executed by Cilla Brown to W. E. Privett for a term of five years. Consideration $1.00. Dated October 24, 1911, and recorded in Tulsa County, October 25, 1911, in Book 115, page 168.

Warranty Deed executed by Cilla Brown to W. E. Privett, consideration $150.00. Dated October 24, 1911. Filed for record in the Register of Deeds' Office October 25, 1911, Tulsa County, and recorded in Book 108, page 246.

Warranty Deed from Cilla Brown to W. E. Privett. Consideration $150.00. Dated October 24, 1911. Filed for record in the office of the Register of Deeds of Tulsa County, November 7, 1911, and recorded in Book 108, page 267.

Order of Court of Tulsa County, Oklahoma, dated November 10, 1911, approving the deed last above mentioned, from Cilla Brown to W. E. Privett, dated October 24, 1911; said order of the County Court being recorded in the office of the Register of Deeds of Tulsa County in Book 115, page 358.

Guardian's Deed executed by Cilla Brown, guardian of Samuel H. Brown, a minor, to W. E. Privett, attempting to convey the land herein described. Consideration $150.00. Dated April 3, 1912. Filed for record with the Register of Deeds of Tulsa County on April 5, 1912, and recorded in Book 125, at page 84.

Order of Court confirming sale of said land by the County Court of Tulsa County, to said W. E. Privett, dated April 4, 1912, and recorded in the Register of Deeds Office for Tulsa County, in Book 77, page 434.

Warranty Deed executed by W. E. Privett to C. R. Privett. Consideration $1.00. Dated October 1, 1912, filed for record in the office of the Register of Deeds for Tulsa County, October 16, 1912, and recorded therein in book 136, at page 678.

Oil and Gas lease from C. R. Privett to H. R. Wilcox, for a term of five years, dated January 18, 1913, filed for record in the office of the Register of Deeds for Tulsa County, January 19, 1913, in Book 129, page 21.

Assignment of the above mentioned lease by H. R. Wilcox to the Oil Production Company, dated January 25, 1913, recorded in Book 126, page 504.

Warranty Deed from C. R. Privett and wife to John O. Mitchell and J. E. Crosbie; consideration $1,000.00, executed August 2, 1913, filed for record in the Register of Deeds Office of Tulsa County, August 11, 1913, and recorded therein in Book 119, page 618.

be and the same are hereby declared void and of no binding force and effect as against the plaintiff and the same are hereby cancelled, and that the title to said premises be and the same is hereby forever quieted in the heirs of the said Madison H. Brown, deceased.

And it is further ordered, adjudged and decreed by the court that the said defendants and their successors and privies

in estate be and they are hereby perpetually enjoined from setting up any claim of title to said real estate under and by virtue of said instruments above described, the court being of the opinion that the said defendants are wholly without right, title, interest or estate in and to the said premises under and by virtue of said instruments, the said instruments being wholly null and void.

The court further finds that the said John O. Mitchell and J. E. Crosbie are holding in possession of said lands herein described without right or authority of law; that the heirs of the said Madison H. Brown are entitled to possession hereof, subject only to the rights of the Oil Production Company, under and by virtue of the terms of the lease herein set out, and that the said heirs of Madison H. Brown are entitled to the rents and royalties from said land from oil and gas production and from other sources, and that said John O. Mitchell and J. E. Crosbie are perpetually enjoined from demanding, receiving or collecting any rents and royalties or revenues of any kind from said land.

And it further appearing to the court from the evidence offered herein that the said defendant, Oil Production Company, a corporation, has since the institution of this suit procured from the heirs of the said Madison H. Brown a good and valid oil and gas lease, which has been approved by the Secretary of the Interior, same is therefore not disturbed by this order.

And it is further ordered that judgment be and the same is hereby rendered against said defendants for the costs of this action.

To all of which findings, holding, judgment and decree defendants C. R. Privett, John O. Mitchell and J. E. Crosbie in open court except and object and their exceptions are allowed.

RALPH E. CAMPBELL,
Judge.

And, to-wit, on the 26th day of August, A. D. 1918, the defendants C. R. Privett, John O. Mitchell and J. E. Crosbie filed their Statement of the Evidence herein, which is in words and figures as follows:

Statement of the Evidence.

Be It Remembered that on this the 15th day of May, 1918, the above entitled cause coming on for trial before Honorable

RALPH E. CAMPBELL, Judge presiding, the United States of America appearing by J. C. Wilhoit, Special Assistant to the Attorney General, and Archibald Bonds, Esq.; the defendants John O. Mitchell and J. E. Crosby by their counsel P. C. West, Esq., and Geo. T. Brown, Esq.; the Sinclair Oil & Gas Company by its counsel Edward H. Chandler, Esq., and Farrar L. McCain, Esq.; and the Tidal Oil Company by its counsel W. C. Franklin, Esq., and all parties announcing ready for trial the following proceedings were had:

LEGUS BROWN produced, sworn and examined as a witness for and on behalf of the United States testified as follows:

Direct Examination by Mr. Wilhoit.

Q. What is your name? A. Legus Brown.
Q. How old are you? A. I am twenty-nine.
Q. Twenty-nine by the Dawes Commission records?
A. Yes, sir.
Q. How old do you understand you are?
A. Right at the age of thirty-two.
Q. Where do you live now?
A. My home is Bixby, Oklahoma.
Q. Where are you located?
A. I am at Camp Travis Training Camp.
Q. How long have you been there? A. Seven months.
Q. You are in the drafted army are you? A. Yes, sir.
Q. What company?
A. In Company Fifty-Two, One Hundred Sixty-fifth Depot Brigade.
Q. Do you know Samuel H. Brown? A. Yes, sir.
Q. Did you know Madison H. Brown in his lifetime?
A. Yes, sir.
Q. When did Madison die?
A. He died September 29, 1911.
Q. Where were you living at the time of his death?
A. Nine miles south of Bixby.
Q. Where did Madison live at the time he died?
A. He lived south of Bixby about twelve miles.
Q. Did you ever live with Madison Brown? A. I did.
Q. When?
A. I went there in the spring of 1904 and lived there until 1907.
Q. Are you any relation to Madison Brown?
A. No, sir; only by marriage.
Q. You did marry his daughter? A. I did.
Q. What is the name of his wife? A. Cilla Brown.

Q. How many heirs did Madison leave when he died?
A. He left two children.
Q. What is the name of your wife? A. Esther Brown.
Q. Is Cilla living? A. She is dead.
Q. When did she die? A. April 22, 1917.
Q. What are the children's names?
A. The daughter's name is Esther Brown.
Q. That is your wife?
A. That is my wife; and the boy's name is Samuel H. Brown.
Q. With whom does Samuel H. Brown live at this time?
A. He lives with me during the summer vacations but he is in school at the present time.
Q. Has he a guardian at the present time?
A. Yes, sir; I am.
Q. You say you are his guardian? A. Yes, sir.
Q. You have had him in school at Sapulpa? A. Yes, sir.
Q. Where are the probate proceedings pending?
A. Pending in Creek County.
Q. Sapulpa? A. Sapulpa, Oklahoma.
Q. Where were you living at the time Sam was born?
A. I was living with Madison H. Brown.
Q. Where was Madison's home at that time?
A. His home was at that time about six miles southeast of Bixby here.
Q. Were you married or single when Sam was born?
A. I was married.
Q. How long had you been married?
A. I was married in June, 1905, and this child was born the following year in April, 1906.
Q. You and your wife were living with Madison at the time the child was born? A. Yes,; in the same house.
Q. Who else was living with Madison?
A. Charlie Bailey.
Q. Is he living or dead? A. He is dead.
Q. When did Charlie die?
A. He died, I don't know exactly the month, but he died last year, 1917.
Q. What were you doing when you were living in the home of Madison Brown?
A. Well, I did the chores around the home on account he was subject to asthma; he was a weakly man and unable to work so I did the chores around the place there.
Q. What kind of business was he in?
A. Well, he farmed at that time; when I first went there he had his land all rented out except a very small tract of it.
Q. Where were you the day Sam was born?
A. I was there at home, Madison H. Brown's.

Q. Do you remember the date he was born? A. Yes, sir.
Q. Do you remember the month? A. Yes, sir.
Q. What month was it in? A. 23rd day of April, 1906.
Q. You say you were at home that day? A. I was.
Q. Were you at home all day?
A. No, sir; I went to town along before noon and came back about noon.
Q. Where were the rest of Madison's family when you came back from town? A. They were down the creek fishing.
Q. Who was there besides Madison?
A. Charlie Bailey was there and Cilla Brown and Esther and Nettie Brown.
Q. Who was she?
A. A daughter of Madison H. Brown and Cilla Brown.
Q. Where is she now? A. She is dead.
Q. What time did you get back from the creek—from town?
A. I don't know exactly what time it was, in the afternoon.
Q. How long did you stay down there?
A. I suppose something like two hours or more.
Q. What happened while you were there?
A. Well, they were fishing with hooks when I came down and after I came down I suggested that Charlie and I take the net in the creek and see if we could catch some fish with it, so Charlie and I did.
Q. You went in the water that day? A. Yes, sir.
Q. What happened so far as Cilla was concerned that afternoon?
A. Well, after we caught a few fish my wife went and cooked the fish down on the creek and after we had a lunch about the middle of the evening Cilla became sick and Madison says for us to hitch up the wagon.
Q. In what way was she sick?
A. That she was going to be sick he says.
Q. Began to have pains? A. Yes, sir.
Q. Do you know what the pains were? A. No, sir.
Q. Labor pains? A. I suppose so, yes.
Q. What did you and Charlie do after Madison suggested you hitch up the wagon?
A. We hitched up the team for him and they all got in and went back to the house.
Q. Back to Madison Brown's house? A. Yes, sir.
Q. Where did you go then?
A. After we got back to the house Madison told me to go over and tell his mother-in-law to come over, Andrew Johnson.
Q. When you got back to the house what was done with Cilla?

A. She got out of the wagon and went in the bedroom and went to bed.

Q. And you went over after Andrew Johnson and his wife? A. Yes, sir.

Q. What relation was Andrew Johnson to Madison?

A. She was his mother-in-law.

Q. What was Madison's wife's name? A. Cilla Brown.

Q. I mean of Andrew? A. Eliza Johnson.

Q. And she was a sister of Cilla Brown?

A. No, she was mother of Cilla Brown.

Q. And you went over after Eliza Johnson as requested by Madison Brown? A. Yes, sir.

Q. Any one go with you? A. No, sir.

Q. How did you go? A. I went horseback.

Q. How far did Andrew Johnson live from Madison at that time?

A. Between mile and a half and two miles.

Q. Did they come over to Madison's that night?

A. They did.

Q. Andrew and Eliza Johnson? A. Eliza and Andrew.

Q. What time did they come over?

A. They come over, it was getting late when they came over.

Q. When was Sam born relative to the time they came over?

A. He was born after they came over there. They came there before dark and Sam was born just shortly after dark.

Q. Eliza took care of her after the child was born?

A. Yes.

Q. Legus what was the nature or kind of day you were down on the creek and the day Sam was born with reference to being cold or hot?

A. Well, it was a pretty day; it was warm but the water was cold.

Q. How were the crops at that time relative to being planted or unplanted?

A. Some was planted and some were just being planted.

Q. Had potatoes been planted at the time? A. Yes.

Q. Were they up? A. Yes.

Q. How about the leaves and grass, green?

A. The leaves were all out, of course they were not full but they were out and the grass was green.

Q. Who was present at Madison's home at the time this child was born besides you and Andrew Johnson and Eliza Johnson? A. Sallie McCoy.

Q. What relation was Sally McCoy to Eliza Johnson?

A. Sister-in-law.

Q. Sister-in-law of Madison Brown. What relation to Cilla? A. Sister-in-law.

Q. When did Sally come to Madison's, that day?

A. Her and her husband Henry McCoy came there shortly after Andrew and Eliza came.

Q. That same afternoon? A. Yes, sir.

Q. Do you know where they came from?

A. They came from home.

Q. How did they happen to come?

A. Madison sent Charlie Bailey over there.

Q. How far did they live from Madison?

A. Somewhere about three-quarters of a mile.

Q. Did they all stay there that night? A. Yes, they did.

Q. You say you lived with Madison Brown four or five years? A. Yes, I did.

Q. Are you acquainted with his handwriting?

A. Yes, sir.

Q. I hand you a book and ask you what it is and when you first saw it?

A. This is a memorandum book kept by Madison H. Brown which was taken out after he died out of his vest pocket.

Q. Where did Madison Brown die?

A. He died at the home Samuel W. Brown built in Sapulpa.

Q. What was the occasion of his death, what was the cause? A. He was hit by a street car.

Q. How soon did you get up to Samuel W. Brown's after Madison was taken there?

A. It was happened the day before and we never got the message until that evening so we didn't go until the next morning.

Q. Did you get there before he died? A. Yes, sir.

Q. You saw this book taken out of his vest pocket after he died? A. Yes, sir.

Q. Who took it out of his vest pocket? A. Cilla Brown.

Q. That is his wife? A. Yes, sir.

Q. Do you know where that book has been since Madison died? A. No, sir.

Q. I ask you to turn to the pages in this book where the corners are turned down showing the dates of birth and ages of the various parties and ask you whose handwriting that is.

A. That is Madison H. Brown's handwriting.

Q. And the next page, that portion of the next page relative to Samuel H. Brown, whose handwriting is that?

A. That is Madison H. Brown's.

Mr. Wilhoit: We would like to have this marked Government's Exhibit.

Q. Who had possession of this book from the time it was taken out of Madison's pocket until it came in your possession? A. Cilla Brown.

Q. And when did you get possession of it?

A. After she died.

Q. Where did you find it?

A. It was in the bible, family bible.

Q. The bible in the possession of Cilla? A. Yes, sir.

Mr. Wilhoit: We offer in evidence this book marked Government's Exhibit No. 1 and the pages where the corners are turned down showing the various children of Madison Brown, including Sam Brown the boy in question.

Mr. West: We object, Your Honor, on behalf of defendants Mitchell and Crosby, because the document offered is not properly identified and because it does not purport as a matter of fact to show anything whatever with reference to the date of the birth of Samuel H. Brown the party whose age is being inquired into here. And for the further reason that it shows evidence of having been tampered with on its face. And we had as well, if the Court please, make the general objection here. The witness has already undertaken to state from personal knowledge the date of the birth of Samuel H. Brown and defendants Mitchell and Crosby desire to interpose an objection to any testimony by the Government as to the date because the same has been adjudicated in a proper proceeding and the plaintiff here and all others are bound by that judgment.

The Court: The objection will be sustained.

Mr. Wilhoit: We except if the Court please.

Q. You don't know, Legus, when these various dates were put in there? A. No, sir.

Q. You didn't see it put in there? A. No, sir.

Q. You don't know anything about the book until it was taken out of Madison's pocket? A. No, sir.

Q. Who was first appointed guardian of Samuel Brown?

A. Cilla Brown.

Q. And you are guardian now? A. Yes, sir.

Q. Did Sam receive an allotment? A. No, sir.

Q. Was he enrolled? A. No, sir.

Mr. Wilhoit: You may have him.

Cross Examination by Mr. West.

Q. Who was present at your marriage?

A. At the time we got the license? When we went to living together as man and wife was Indian custom there wasn't any one.

Q. You didn't have any license at that time? A. No, sir.

Q. When did you get a license, if you ever did?

A. I believe it was in November or December, 1910, but I don't recall the exact date. It was in November we got married in December, I think it was 1910.

Q. That was before Madison Brown's death?

A. Yes, sir.

Q. Who did you say was present then at that wedding if you have stated? A. I haven't stated.

Q. Who was there?

A. Johnson Pickett, Micco Behen, Maxey Simms was the minister; Jennett Behen and Mrs. Johnson Pickett.

Q. Are any of those people present here today?

A. No, sir; except Maxey Simms.

Q. Who got your license for you? A. I did.

Q. Yourself? A. Yes, sir.

Mr. Wilhoit: Your Honor please, I don't see the materiality of that. I believe we will object to it.

The Court: Overruled now. I will see what counsel is leading to.

Q. Was anybody present with you at the time you got your license? A. Yes, sir; by uncle, Johnson Pickett.

Q. How old are you?

A. According to the Dawes Commission roll I am twenty-nine, but my actual age is thirty-two last birthday.

Q. Thirty-two your last birthday? A. Yes, sir.

Q. When is your birthday? A. In November.

Q. You were thirty-two last November? A. Yes, sir.

Q. Do you remember what year you were born in?

A. No, sir.

Q. Have you ever been told what year you were born in? A. No, sir.

Q. Didn't you give your age at the time you got married according to law as being twenty-three?

A. I suppose I did.

Q. That was in November, 1910? A. Yes.

Q. That wouldn't make you but thirty-one this coming November would it? A. Yes.

Q. That would figure out thirty-one? A. Yes.

Q. Then you wouldn't have been but nineteen years old twelve years ago would you, you wouldn't have been nineteen in the spring of 1906?

The Court: Well that would follow in case he gave the age of twenty-three as suggested there.

Q. That is correct isn't it? A. Yes, sir.

Q. As a matter of fact Legus you don't know how old you are do you? A. No, sir; I don't know.

Q. You were a right young fellow in the spring of 1906 weren't you? A. I was.

Q. According to the Dawes Commission roll you would have been about seventeen?

A. Yes, he seventeen the following fall I believe, yes.

Q. You wouldn't have been quite seventeen?

Mr. Wilhoit: Your Honor please, I believe we will object to that. It is a matter of calculation.

The Court: Well, go on. To a reasonable extent you may interrogate this witness as to his knowledge of his age and as to dates and years.

Q. You claim that you had been living with Esther Brown as her husband for nearly a year prior to that time? A. Yes.

Q. You began to cohabit with her in June, 1905?

A. Yes, sir.

Q. Where did you say you had been the day you were down at the creek fishing?

A. Went to town, little town they call Bixby.

Q. Came back and went down to the creek? A. Yes, sir.

Q. And they sent you as a messenger to bring the mother of this woman there? A. Yes, sir.

Q. You were there at that place for some time after that weren't you? A. Yes, sir.

Q. How long? A. We were there until 1907.

Q. What time in 1907 did you move away from there?

A. I don't remember the date but it was in the month of September when we moved when we built a house, but we lived in a tent on my wife's homestead in the summer and built a house in the fall, commenced the house in September.

Q. After 1907 you weren't back there with any great degree of frequency were you? A. Yes, sir.

Q. You were there often? A. Yes, sir; often.

Q. How often?

A. Well, I couldn't say, we were over there every other day; it is only a little distance.

Q. How far was it from where you were living?

A. I suppose about four hundred miles—four hundred yards.

Q. And so you saw each other frequently. How long did you live at that place where you were only four hundred yards from that place?

A. We lived there until in February, 1909.

Q. 1909? A. Yes.

Q. And then where did you go?

A. South of Sapulpa on my own allotment.

Q. And you lived there until after Madison Brown's death didn't you? A. Yes, sir.

Q. On that allotment? A. Yes, sir.

Q. That was some distance from where Cilla and Madison lived? A. Yes, sir.

Q. How far? A. Used to call it eighteen miles.

Q. And after you went over there to live in 1909 from then on you didn't get over to the other place so frequently?

A. No, sir.

Q. It was something of a journey from where you lived over to where they lived? A. Yes, sir.

Q. Did you ever have any conversation with Mr. C. R. Privett who is one of the defendants in this case in regard to this matter? A. No, sir.

Q. Never did? A. No, sir.

Q. At any time? A. No, sir.

Q. I will ask you if you didn't know of a suit that was brought in the Superior Court of Tulsa County in the year 1913?

Mr. Wilhoit: We object to it because it is incompetent, immaterial.

The Court: Overruled.

Mr. Wilhoit: Exception.

A. No, sir.

Q. Never knew anything about it?

A. No, sir; only that W. E. Privitt has spoken to my wife on our way coming here to Muskogee on a train. He happened to be on the train and in the rear seat and got up and came there. He says: "Esther, I brought a friendship suit but you don't have to be there. So it is just a matter of friendship suit that I brought so you don't have to be there." That is all that was said. That is the only time he mentioned about a suit.

Q. Or anything else about this matter?

A. No, sir; that is all that was said.

Q. When was that?

A. I don't remember. But I believe that was after I went to work for the government.

The Court: Now what suit was that Mr. West?

Mr. West: In the state court to quiet the title to this property.

Mr. Wilhoit: If Your Honor please, in order to save objection all the time we would like to object to any testimony offered by the defendants relative to the proceedings in the state court, because the government is not bound by any decisions or any proceedings in that court. We might object at this time so far as the witness is concerned because it is not cross examination.

The Court: Now, the only way in which the judgment of the state court or the action of the state court in that case can be gotten before this court, if it is competent here at all, will be by the records. On cross examination these witnesses may be properly asked about their connection with the suits or anything that they said or did with relation to those suits, as testing their recollection or the credibility of their testimony here in this case, and I take it that that is the trend of this examination. Your objection will be noted and overruled and exception noted.

Q. Legus that was not this Mr. Privett here?

A. No, sir.

Q. That was the other Mr. Privett? A. Yes, sir.

Q. Now isn't it a fact, to refresh your memory, that you were living in Sapulpa in the early part of the year 1913?

A. I did.

Q. Along during the first part of the year 1913 didn't this Mr. Privett who is here in court, Mr. C. R. Privett, come there and see you about this matter and tell you that he had brought a suit in the Superior Court of Tulsa County to quiet the title to this land against Esther, your wife, and Cilla and some others, that was in the Indian Agent's office where you were working at that time, I believe it was the District Agent.

A. He came there, C. R. Privett came there and wanted her to sign a quitclaim of all her rights and title in some land. And so I didn't know whether or not she would sign. So I taken her up to the office of the field clerk and I asked Mr. McDaniel about it. And so Mr. Privett told Mr. McDaniel, talked to him awhile and came back and Mr. McDaniel said it was all right to have her sign and suggested that he put the description of the land in; and so Mr. Privett did with a pencil or pen before my wife signed it; there was nothing said about a suit at all.

Q. Isn't it a fact instead of being a quitclaim it was a disclaimer that was to be filed in that very suit, isn't that what it was; he wanted to find out whether she would execute it or not? A. I understand it was a quitclaim.

Q. It might have been a disclaimer? A. Yes.

Q. You are not an attorney? A. No, sir; I am not.

Q. And not versed in those things? A. No, sir.

Q. You understand he had brought a suit and whatever it was that she was going to sign or execute was something that would set up therein that she didn't have any claim in the property?

A. I didn't understand about any suit at all. In fact there was nothing mentioned to me about the suit at all.

Q. You say Mr. Privett didn't tell you about the suit and what it was for? A. No, sir.

Q. You didn't at that time say anything at all about there being any claim of anybody on account of this boy not being born until after March 4, 1906? A. No, sir.

Q. You were joined with Esther in a deed, did you not, to this property?

A. I did as to her interest in the homestead of Madison H. Brown.

Q. I will show you a paper here. This is a warranty deed for this property to W. E. Privett, ask you if that is your signature there?

A. Yes, sir; I signed that with her as her husband.

Mr. West: I d e n t i f y that as Defendant's Exhibit No. 1.

Q. Isn't it a fact, Legus, Mr. Privett went down to your house with you at that time when Esther executed that paper about that suit, which was some four blocks or such a matter from the District Agent's office?

A. It is further than that. He went with me and I told him we would take it up to the office to the Field Clerk and he would advise whether she could sign.

Q. Now, isn't it a fact, Legus, Mr. Privett explained to you when you were going down there and down at the house and that Esther signed that document and didn't go to the District Agent's at all.

A. No, sir; she didn't sign it at home.

Q. She didn't sign it?

A. Not in the house, she was at the office in the presence of Mr. McDaniel, and Mr. Jones.

Q. Is that the same Mr. McDaniel that was here in the courtroom a while ago? A. Yes, sir.

Q. He was then District Agent?

A. He was in charge of the office at that time.

Q. You don't know what his position was?

A. As Field Clerk.

Q. He was Field Clerk? A. Yes, sir.

Q. And you also that Cilla had made a deed for this property?

Mr. Wilhoit: If Your Honor please, we object to all this because it is incompetent, and a conclusion of the witness; not the best evidence.

The Court: You may proceed.

Mr. Wilhoit: We except.

Q. You knew that Cilla had executed a deed to her interests to Mr. Privett? A. I did, I saw her sign the deed.

Q. That was at the same time, wasn't it, you and Esther signed the deed?

A. Yes, she signed her deed before Esther signed the deed to her interests.

Q. Who is this Charlie Bailey that you have referred to in your testimony a time or two?

A. He was an Indian; he is now dead.

Q. Where did he live at that time?

A. He was living with Madison part of the time, what time he wasn't away from there.

Q. He is now dead? A. Yes, sir.

Mr. West: I believe that is all.

Redirect Examination by Mr. Wilhoit.

Q. Where were these deeds that you have testified about signed, the one that Cilla signed, and the one that you and Esther signed?

A. It was in the bank at Bixby, Farmers and Merchants Bank.

Q. Do you remember when it was?

A. The latter part of October, 1911.

Q. How long had Madison been dead at the time these deeds were signed?

A. I don't believe he was dead thirty days.

Q. How did you happen to be in Bixby, and how did you happen to be in the bank at the time that the deeds were signed?

A. At first we drove from our place over to wh*ether* Cilla lived to see how she was getting along, and after we got there the next day, she wanted us to go to town with her. Wanted me to hitch up my team and take her down so she could do some trading, and so we did. When we got to town, we were in the bank at that time, the Bank of Bixby. There are two banks there, one on the west and one on the east side. We were in the one on the west side of the street.

Q. Do you remember the name?

A. Bank of Bixby and Farmers and Merchants Bank.

Q. Who had charge of this bank? A. Mr. Paupler, J. T.

Q. Did either of the Privetts have anything to do with the bank at that time?

A. Not this bank of Bixby, no, sir.

Q. The bank you were in, did either one of the Privetts have anything to do with the bank?

A. He was in there; I think he was assistant cashier.

Q. How did you happen to go in the bank there, and when did you first go in there?

A. Mr. Privett sent Jim Parkinson out to Cilla and told her to come over.

Q. Did you go when he first came after her? A. No.

Q. What time did he first come after her?

A. Little after noon.

Q. When did Jim come back the second time?

A. About half an hour or later.

Q. What did he tell Cilla and Esther at the time he came and talked to her?

A. He said Mr. Privett wanted to see you two, or have you all come over to the bank.

Q. Did you go over to the bank? A. Yes, sir.

Q. Who did you see in the bank?

A. Mr. Hornecker was in the front part of the bank, and Mr. Privett was standing back, and so when we come into the bank, he says, "Cilla, come on back her-; I want to see you," and so he got her in the rear part of the bank where his desk was, and then she called her daughter, and my wife says, "Let's go see what she wants," and when we got to where Cilla and Mr. Privett was, she said to her daughter, says: "He wants to buy your papa's land, what do you think about it?" And Esther says "he hasn't been dead thirty days yet, I don't care to talk about it at this time." So he told her she just as well sell it. That it isn't worth much; it is poor land; most all alkali. She says, "I know that, but I don't care to sell it because he hasn't been dead so long and I don't feel like talking about the matter at this time." And asked how many heirs are in the case. Cilla says only two children, that is, this little boy and hers.

Q. Was Sam with you at the time? A. Yes, he was.

Q. Did you sign any deed at that time? A. No, sir.

Q. When did you go back again?

A. We went out of the bank and Cilla went to do some trading. In the evening Jim Parkinson came back again and said for them—he said Mr. Privett sent him for them to come back and Jim thought he was going to pay more money that he offered.

Q. Than what he offered the first time? A. Yes.

Q. How much? A. One hundred fifty dollars.

Q. Was anything said about the question as to whether or not—the interest they had in it? A. No, sir.

Q. You didn't execute a deed the first time? A. No, sir.

Q. Did Esther refuse to sign a deed the first time?

A. She told him she didn't care to sell it.

Q. You made no agreement the first time? A. No, sir.

Q. When you came back late in the afternoon, what did Mr. Privett tell you he would give you at that time?

A. He told Cilla and Esther, "I've figured this out and I don't know whether you have an interest in it but I will take a chance at it, and I will give you a hundred and fifty dollars apiece, and if the deed is not good, I will just lose that much." And Cilla had been drinking some intoxicating liquor and as we call it in our ways, she was feeling good. She said "fix your paper up, I will sign it for you."

Q. Were the papers fixed up? A. Yes.

Q. How many were fixed up?

A. Two. Cilla signed one and Esther says, "I don't care to sell my interests at all because I don't feel like I ought to sell it." Cilla says, "Well, I am going to sell mine." Mr. Privett spoke up and says "you have only such a small interest, there is three of you and you only have about thirteen hundred acres and some fractions, and it would cost her more than she could get to have it divided and it would be best for her to sell it;" and also Cilla says to him, "I have already signed for mine;" and so she finally agreed to sell it to him and he prepared a deed.

Q. You signed the deed with Esther? A. Yes, sir.

Q. Did you hear all the conversations the second time you were in there, between Cilla and Mr. Privett and Esther?

A. Yes.

Q. Did you hear all of it the first time?

A. No, sir; that is, with Cilla, I did, with Esther.

Q. Who else was present at the time you were talking with Mr. Privett at the time these deeds were executed? Was anyone else in the bank besides you, and Esther, and Cilla, and Sam, and Mr. Privett?

A. Rosa Grant, and Jim Parkinson, and two little girls of hers.

Q. Was Mr. Hornecker in the bank?

A. He was in the front of the bank.

Q. Did you acknowledge those deeds? A. Yes, sir.

Q. Who took your acknowledgments?

A. In the front of the bank, Mr. Hornecker.

Q. What other conversation was had in the back part of the bank with reference to another paper to be executed after that?

A. After they executed the deed before Mr. Hornecker, he called them back to the desk where he was at first, and he sat down at the machine, but I had the boy in front with me, he was crying. After he got through, my wife called me, and says come here, he wants you to sign some more papers.

Q. Had the paper already been signed by Esther and Cilla when you got there? A. Yes, sir.

Q. Did you read it? A. Yes, sir.

Q. What was it?

A. It was an affidavit as to the birth of this boy.

Q. Samuel H. Brown? A. Yes, sir.

Q. What date was fixed in that affidavit as to the birth of Samuel H. Brown, if you remember?

A. I don't recall the exact words, I know it did mention about one Sammie that has been dead and this Sammie was now living was born February 23, 1906.

Q. That is the date he had fixed in the affidavit?

A. Yes.

Q. Did you sign that affidavit? A. No, sir.

Q. Why didn't you sign it?

A. We just discussed the matter before they signed the deed and Cilla told him when he was born; and also we was talking about the date of his birth, the day before that. And so, I told him, "Mr. Privett, this month changed from February to April, I will sign it."

Q. Had you had some conversation prior to that time as to Sam being born in April instead of February? A. Yes, sir.

Q. You refused to sign when he refused to change the date of birth? A. Yes, sir.

Q. Do you know what became of that paper?

A. Mr. Privett took it out of my hands.

Q. You haven't seen it since? A. No, sir.

Q. Legus, did you have any heated discussion in there at that time? A. We did.

Q. About signing this affidavit? A. Yes, sir.

Q. What did Mr. Privett say there to you?

A. Well, he says Cilla and Esther signed; there is no reason why you shouldn't sign.

The Court: What Mr. Privett is that?

Mr. Wilhoit: W. E. Privett.

A. And so we finally—well, we simply got into a fuss on account after he paid Esther, he held out five dollars.

Q. And he wouldn't pay that five dollars?

A. And insisted on me signing that affidavit. He says, "Legus, if you sign that, I will give you this five dollars; in fact, she ought to pay part of the recording of this paper."

He held out five dollars he had ought to pay her, and if he didn't, to give up the deed because we got to get out of there. He says "if you sign up that paper I will give Esther this money; if you don't, I am going to hold this out." We just rowed around there quite a while and I got pretty mad. And so I told him, "You know Cilla was drunk, so I am going to see that you don't get your deed from Cilla approved in the court. If you are going to treat us that way." So, after I says that he smiled and says, "Here is your five dollars, I was just kidding with her." And we stepped out of the bank, and Cilla after she got out of the bank was unable to go anywheres, and I took her to the hotel and put her in the bed.

Q. While you were in the bank with Mr. Privett and these other parties, was any liquor passed around at that time?

A. Yes, there was.

Q. Where did it come from?

A. Mr. Privett reached back in his hip pocket and handed it out.

Q. Who drank? A. Cilla took it first.

Q. Who else drank? A. Jim Parkinson and Rosa Grant.

Q. Did you drink any yourself? A. No, sir.

Q. Did Esther? A. No, sir.

Q. What was Cilla's condition at that time with reference to being intoxicated?

A. I would call her pretty drunk.

Q. Where did you take her after you went out of there?

A. Took her to the hotel and put her to bed.

Q. Did she stay there?

A. No, she got up, and the second time she went to the bank.

Q. How did you know she went to the bank, went over there?

A. C. R. Privett came and told me after we put her to bed the first time—the children hadn't had any supper, and wanted some ice cream; we was eating ice cream and C. R. Privett came to the door and called me, and when I got outside he says, "Cilla is over at the bank drunk." And I went right over, and when I got to the bank, Cilla was just coming out of the door, and I just grabbed her arm, and the hotel wasn't but just a little ways, and so I took her back to her room. By the time I got to the door of the hotel, Esther come and we put her to bed, *and we put her to bed*, and we held her there until she went to sleep, and we got a room right across the hall from her.

Q. Was that the first time you had any conversation with C. R. Privett that day? A. Yes, sir.

Q. When you signed that deed and refused to sign the affidavit you didn't know whether it made any particular difference as to whether he was born in February or April, did you?

Mr. West: Counsel indulges considerably in leading questions.

The Court: Objection sustained; that is a leading question.

Mr. Wilhoit: I admit it was, if Your Honor please.

Q. Why did you refuse to sign that affidavit?

A. It wasn't right; it wasn't the right month; the day and year was alright but it wasn't the month. That made him two months older.

Q. Did you have any knowledge at that time that it made any difference whether it specified February or April?

A. No, sir.

Q. When did you first learn that it did make any difference as to whether or not he was born in April or February?

A. That was after Mr. McDaniel was making a guardianship report, 1914, I believe it was.

The Court: What was the date of this bank transaction?

Mr. West: October 24, 1911.

Q. Do you know wh*ether* this affidavit is now?

A. No, sir.

Q. Did you have a copy of it? A. No, sir, I haven't.

Mr. Wilhoit: That is all.

Recross Examination by Mr. West.

Q. You testified before when you gave your deposition that that affidavit wasn't sworn to by anybody, didn't you?

A. Sir?

Q. You testified when you gave your deposition that that affidavit wasn't sworn to by anybody? A. No, sir.

Q. What do you say?

A. I say that affidavit wasn't acknowledged at all.

Q. Wasn't acknowledge- at all?

A. No, sir, not while we were there.

Q. Well, did you all go back there any more?

A. No, sir.

Q. Left town without going back to the bank any more?

A. We never went back any more then at all.

Q. You and Mr. Privett had some controversy there in the bank? A. Yes, sir.

Q. You both got pretty mad over it?
A. Yes, I did, and he did, too.
Q. You threatened him at that time that you were going to interfere with the approval of that deed of Cilla's when it came up for approval in the County Court?
A. I did, for the reason that he held out five dollars from my wife.

Mr. Wilhoit: We would like to ask a few questions.

Redirect Examination by Mr. Wilhoit.

Q. Did you interfere with the approval of that deed?
A. No, sir.
Q. Was the paper that you call an affidavit ever sworn to that you know of? A. No, sir.

Witness dismissed.

And thereupon court took a recess until 2 o'clock P. M.

And thereafter, court reconvened at 2 o'clock P. M. and further proceedings were had:

And thereupon E. B. MAXEY was produced and sworn as a witness for and on behalf of the United States and testified as follows:

Direct Examination by Mr. Wilhoit.

Q. Your name is E. B. Maxey, is it not? A. Yes, sir.
Q. Mr. Maxey, did you know Madison H. Brown in his lifetime? A. Yes, sir.
Q. Did you know his wife, Cilla Brown? A. Yes, sir.
Q. What relation, if any, is your wife to Madison H. Brown or was she, before he died? A. Sister.
Q. Where did you live in 1906? A. I lived near Wealaka.
Q. And how far did you live from Madison?
A. About two and a half or three miles.
Q. How many years did you live there?
A. Well, I lived there——
Q. Well, about how many years?
A. I lived there about twelve years, I guess.
Q. Do you remember when you first went there?
A. I first went there about 1903, I believe.
Q. Were you living there at this place near Madison H. Brown at the time Samuel Brown was born, his youngest boy?
A. Yes, sir.
Q. When was Sam born? A. Well——

Mr. West: Wait a moment, if the Court please. Will it be necessary for us to repeat our objection to the parole testimony as to the date of the birth of this child upon the ground that it is precluded by the former adjudication?

The Court: You may state that objection into the record now, Mr. West, with the understanding that it applies to all the Government's testimony in the case. Put it in the shape you want it.

Mr. West: The defendants, Crosbie and Mitchell, object to all testimony offered by the Government for the purpose of establishing the date of the birth of Samuel H. Brown subsequent to March 4, 1906, upon the ground that that issue has been adjudicated by a court of competent jurisdiction, and that all persons are bound thereby, and that the matter is no longer open to inquiry. The defendant requests that this objection be considered as going to all testimony offered, whether specifically made as the testimony is elicited or not.

The Court: The record may show the objection, and the objection may stand as applying to any and all testimony which the Government may offer in relation to the date of the birth of this minor, with out the necessity of counsel repeating the objection from time to time. That will make *ylur* record for you. The objection is overruled and exception noted, and that may be noted as the order of Court from time to time as different witnesses appear. I understand this suit was a suit between the parties in which Mr. Privett was the plaintiff and these various Indian grantors the defendants, and the purpose of the suit was to quiet the title and that it is not contended that the United States appeared in any way in those suits.

Mr. Wilhoit: Your Honor, please, I presume there is no reason why Legus Brown should not be released from the rule, he is guardian of this boy.

The Court: He may remain.

Q. When was Sam born, Mr. Maxey?
A. He was in April or May, 1906.
Q. Sometime in the spring? A. Yes, sir.
Q. What fixes the time or the month that he was born in your mind, how did you fix that?
A. Well, Madison Brown sent Charlie Bailey over there after my wife, and I was working down in the field, and my wife was over further in the field with a renters wife where she was at work there hoeing potatoes.

Q. Were potatoes up at that time?

A. Yes, they was about this high (indicating).

Q. What time do they ordinarily plant potatoes out in your neighborhood?

A. Well, they plant them along the first of March; some people plant them along about the last of April—I mean the last of February.

Q. Were potatoes ever up the latter part of February in that part of the country? A. No, sir, I never seen them.

Q. Did you go to Madison Brown's on the night Sam was born? A. Yes, sir.

Q. Did your wife go—you said Charlie Bailey came after her?

A. No, the child was done born when Bailey come after my wife. The night before, as I understood.

Q. What did he say to your wife?

A. Wanted her to come over and wait on his wife.

Q. Did she go? A. Yes, sir.

Q. How long did she stay?

A. She stayed three or four days.

Q. Where was your wife when Charlie Bailey came over there? A. Well, she was over on a little branch there.

Q. With whom was she?

A. She was with a lady by the name of Williams.

Q. Mr. Williams was a renter on your place?

A. He was a renter.

Q. Did you have any conversation with Madison Brown with reference to Sam being on the roll?

A. We talked about it a good deal, about his boy and mine. I had one about eight or nine months younger than his and we talked about it a good deal, wondering if we would get to file for him, and he said he didn't believe that he would; that some members of the council was fighting it, and he didn't believe they would ever open the roll.

Q. Was any statement made by him relative to Sam being born too late to get on the rolls?

A. Yes, it was understood between myself and him that mine and his was born too late to be enrolled unless the rolls would be opened again.

Mr. West: If the Court please, we move that the answer be stricken.

The Court: The motion will be sustained. The only intelligent evidence would be as to what gave rise to this understanding, if Brown said anything, that may be shown. I sustain the motion to strike his answer as to what his understanding was.

Mr. Wilhoit: Not what Madison Brown said.

The Court: Well, not anything that this witness has stated that Madison Brown said. Has he said anything?

Mr. Wilhoit: I didn't catch it all.

Q. Mr. Maxey, did Madison ever make any statement to you about when this boy was born, relative to the time that the rolls closed? A. Not that I remember.

Q. Never heard him make any such statement? A. No.

Q. Didn't he tell you at times this boy was born too late to get on the rolls? A. Oh, yes.

Mr. West: Objected to as leading, Your Honor.

The Court: Well, it is passed now. Don't lead the witness.

Q. Mr. Maxey, did you have any paper of any kind in your possession that will fix the year in which this boy was born? A. Yes, sir.

Q. What is it? A. It is a mortgage.

Q. When was that mortgage given? A. June 6, 1906.

Q. By whom was the mortgage given?

A. It was given by John Williams and myself.

Q. Who was John Williams?

A. He was a renter on the farm.

Q. What was the purpose of giving that mortgage?

A. It was for to get some money to make a crop on.

Q. Working your place that year? A. Yes, sir.

Q. And when was that relative to the time Samuel H. Brown was born, before or after Sam was born?

A. That was after Sam was born that this mortgage was made.

Mr. Wilhoit: That is all.

Cross Examination by Mr. West.

Q. Mr. Maxey, how long did you continue to live there in that neighborhood after 1906?

A. Well, sir, I—right there at that place I left the last part of fourteen, I believe, 1914.

Q. The last part of 1914?

A. Yes, sir; let me see. The last part of '14, or the last part of '16.

Q. You were still living there when Madison Brown died?

A. Yes, sir.

Q. You have nothing to fix in your mind the precise date of the birth of this child whose age is in controversy here, excepting the condition of the crop at the time? A. Yes, sir.

Q. That is all that you are going by? A. Yes, sir.

Q. This mortgage you have referred to, you say was made in June? A. Yes, sir.

Q. And that was after he was born? A. Yes, sir.

Q. Neither you nor your wife were present at his house at the time of his birth? A. No, sir, I wasn't, I know.

Q. You do not think your wife was?

A. Well, no, I do not think she was.

Q. You haven't had any particular occasion until recently to try to fix any date for that, have you? A. No.

Q. In other words, there wasn't anything to fasten upon your mind at the time of the occurrence the actual date of the birth of this boy?

A. No, there wasn't nothing, nothing that I would know the date by, the exact date.

Q. And at the time of the death of Madison Brown the child was five years—five or six years old, wasn't he?

A. Well, I don't remember just what year Madison died but it seems to me it was about six years ago, and the child would be about six years old then, would be about six years ago he got killed or died.

Q. You don't know the date Madison Brown died?

A. No, I don't.

Q. You never heard the matter of the date of the birth of this child discussed at all until some time after the death of Madison Brown, did you? A. No.

Redirect Examination by Mr. Wilhoit.

Q. Mr. Maxey, your child that you speak of being born too late, what was the date of his birth with reference to Sam's birth? Was it before or after?

A. He was born afterwards.

Q. You know the day of the month that he was born?

A. Yes, he was born the 29th of February, 1907.

Witness dismissed.

And thereupon SALLIE FLEETWOOD produced, sworn and examined as a witness on behalf of the United States, testified as follows:

Examination by the Court.

Q. How old are you? A. I don't know.

Q. Are you married? A. Yes, sir.

Q. What is your husband's name? A. Fleetwood.

Q. Where do you live? A. Live Tulsa County.

The Court: Now, talk up loud, and just answer the question.

Direct Examination by Mr. Bonds.

Q. Did you know Madison Brown in his lifetime?
A. Yes.
Q. What relation are you to him, what kin, brother, sister? A. Somebody interpret.

The Court: You needn't be afraid to talk.

A. I know but I can't talk.

The Court: You just go slow and be sure you understand him and there will be no trouble about it.

Mr. Bonds: I will withdraw that question.

Q. Did Madison Brown have a boy named Sammie, Sammie H. Brown?
A. Yes, sir.
Q. Where were you living when that boy was born?
A. I live I think a half mile.
Q. Do you remember the occasion of the date of his birth?
A. I know, remember the date, I know the month born.
Q. What month was it. A. April.
Q. Do you know it was April?
A. Well, I know he was born April.
Q. What makes you think it was April?
A. Why, that is what they born.
Q. Well, now what makes you think it wasn't March or May? A. My husband was planting corn.
Q. Was he planting corn the day this child was born?
A. Yes, sir.
Q. Who came after you and told you? A. Who?
Q. Who came over to your house and told you?
A. My husband come by, my husband says little boy he told me her sister sick, told me to go down there, and I went down.
Q. *Where* you there when the child was born?
A. Yes, sir.
Q. And your husband that day was planting corn?
A. Yes, sir.
Q. Who else was there when the child was born?
A. Madison and Esther, and old man Johnson.
Q. Did your husband come from the field and tell you that his sister was sick?
A. Her sister sick, he said.
Q. Your husband? A. Yes, sir.
Q. Is a brother to Cilla? A. Yes, sir.

Mr. Wilhoit: Take the witness.

Cross Examination by Mr. West.

Q. Mrs. Fleetwood, what time of day was it when your husband told you about this child being born?

A. I don't know; I don't pay no attention to the clock.

Q. You didn't pay any attention to the time? A. No.

Q. And what were you doing?

A. I just cooking supper when they come back.

Q. How long had he been gone when he came to tell you that?

A. He has been gone all day, all evening, he come back, and went back planting corn, they come back in the evening. He come by the house, he found out his sister sick.

Q. You had dinner in the middle of the day? A. Yes, sir.

Q. And then your husband planted corn all evening?

A. Yes, sir; he planted all day.

Q. And then he came back and told you? A. Yes, sir.

Q. In the evening that they had a child down there?

A. Yes, sir.

Q. Did he tell you the child was already born?

A. No, sir; I went out there.

Q. You were out there when the child was born?

A. Yes, sir.

Q. Now, who told you that it was the month of April when he was born? A. Nobody, I knowed it.

Q. You know it was April? A. Yes, sir.

Q. But you only know that because you were planting corn? A. Yes, sir.

Q. You haven't anything else?

A. No, he told April, he year old, all the time; that is what I know, April he born.

Q. You are going by his birthday?

A. Yes, I went over there once while he lived; around there close.

Q. You didn't have anything to do with keeping track of the child of Madison Brown did you?

A. No, sir; not a bit. Just all I went on, the child was born.

Q. And who did you say was there the night he was born?

A. Legus and Esther and Andrew Johnson.

Q. Anybody else? A. Old Miss Johnson, she died.

Q. She died? A. Yes, sir.

Q. Is Andrew Johnson alive? A. Yes, sir.

Q. And the only way you have of fixing the date is by what your husband was doing at that time? A. That day?

Q. Yes. and the month. A. Oh, he is planting corn.

Q. That is all you know about it? A. That same day.
Q. What year was it? A. 1916.
Q. 1916? A. Yes, sir.
Q. Are you sure of that? A. Yes, sir.
Q. Did I understand you to say 1916? A. Yes, sir.

Mr. West: That is all.

Redirect Examination by Mr. Bonds.

Q. Do you know what year this is? A. Yes, sir.
Q. What is it? A. 1918.
Q. Well, was it just two years ago?
A. Oh, I mean 1906? That is what I mean.

Recross Examination by Mr. West.

Q. Mrs. Fleetwood, have you talked to your husband about what your testimony was going to be in this case?
A. My husband ain't here; he died.
Q. How long has he been dead?
A. Been about nine years ago.
Q. Did you talk with him about this any before he died?
A. No, sir; I didn't.
Q. You never heard this discussed at all? A. No, sir.
Q. Until lately, did you? A. No, sir.
Q. Have you got a husband now? A. Yes, sir.
Q. Another husband? A. Yes, sir.
Q. Have you talked to him about what you were going to testify in this case? A. No, sir.
Q. Is he here? A. No, sir.
Q. Not here as a witness? A. No, sir.
Q. How long have you been married to him?
A. About six years ago.
Q. Is he a white man or Indian? A. White man.
Q. Did he live there in that neighborhood at that time?
A. I think he live there close.
Q. You think he was living right there close at that time?
A. Yes, sir.
Q. And he is up at your home now? A. Yes, sir.
Q. And he didn't come down here as a witness?
A. No, he didn't come.

Witness dismissed.

And thereupon Mrs. E. B. MAXEY, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

Direct Examination by Mr. Wilhoit.

Q. This is Mrs. E. B. Maxey, is it not? A. Yes, sir.

Q. You are the wife of the man that was on the stand a while ago. A. Yes, sir.

Q. Did you know Madison H. Brown? A. Yes, sir.

Q. What relation was he to you? A. My brother.

Q. How near did you live to him at the time he died?

A. Oh, I don't know; just the distance of three or four miles.

Q. Did you live there 1906?

A. Yes, we lived there until just two years ago.

Q. Mrs. Maxey, were you present when Samuel H. Brown was born? His youngest boy?

A. No, I wasn't present when he was born.

Q. Did you go there after he was born?

A. Yes, my brother sent for me after he was born.

Q. How long after he was born?

A. Well, I don't remember; I don't think he was a couple of days old, maybe only a day old.

Q. Who came after you, Mrs. Maxey? A. Charlie Bailey.

Q. What did he tell on?

A. He said my brother had a big boy and wanted me to come over and help him if I could.

Q. Did you go over there to him? A. Yes, sir, I went.

Q. On the day Charlie Bailey came after you where were you?

A. I was in the field with John Wililams' wife where she was hoeing potatoes.

Q. How high were the potatoes at that time?

A. About that high (indicating); wasn't very high.

Q. Do you know the month Sam was born in?

A. Well, it was in April.

Q. What year? A. 1906.

Mr. Wilhoit: I believe that is all.

Cross Examination by Mr. West.

Q. Mrs. Maxey, you are fixing this time by the state of the crop, are you?

A. I don't understand what you mean.

Q. Well, you say this child was born at a certain time, and you say potatoes were a certain height at that time, that is what makes you say it was in the spring of the year?

A. Well, I know he was born in April, but I don't know what month; we rented to that man Mr. Williams.

Q. You know he was born in April, but you don't know what month?

A. I mean the day of the month.

Q. The Williams were already on the place?

A. Yes, sir; we rented to them that year, in 1906, and they moved there the last of February, towards the last week in February, and so he planted his potatoes in March, and the potatoes wasn't very big in April, they was small, and she was hoeing them.

Q. And that is what you are going by?

A. I don't go by the potatoes altogether, I go by the potatoes, too, because they couldn't have potatoes any earlier.

Q. How long did you stay over there at the house?

A. With my brother?

Q. Yes.

A. I don't remember just how many days; I think I stayed three or four days. I can't remember the time just exactly, but I stayed three or four days and helped around there. He had other helpers there, or more employees.

Q. Who else was there?

A. Well, there wasn't anyone else living there but himself, but there were so many working there all the time, I can't remember. Mr. Swartz was working there for one. I don't know whether he was working right there when the boy was born or not.

Q. This has been about twelve years ago?

A. Yes, he was twelve years old, or will be this coming April, I think.

Q. You haven't heard the matter discussed any until the last two or three years, have you?

A. Well, we talked it out to ourselves about his being born too late to get a filing.

Q. That is you and your husband have talked about that?

A. Yes, and my brothers and us have talked about it, too, good while ago, before his death, that that boy was born too late to have an allotment.

Q. Did you discuss the question about the age of this boy at the time of Madison Brown's death?

A. Well, I don't remember.

Q. You were living there in that vicinity when Madison Brown died, weren't you? A. Yes.

Q. Do you remember when Madison Brown died?

A. Well, I don't remember just the date; it was in the fall.

Q. Do you remember the month?

A. I think it was in September: I won't say for sure.

Q. You don't know? A. No, I don't.

Q. That happened several years after the boy's birth, didn't it? A. Yes, sir.

Q. You remember the day of the boy's birth, but you don't remember for sure the time Madison died?

A. I don't remember the date of his birth, I remember the month; he was born in April, but I couldn't get up and swear that he was born a certain date, but I know he was born in April.

Q. You are sure of that, but you are not sure of any other date along that time? A. No.

Q. You and your husband have discussed this matter since this suit was filed?

A. Well, yes, we talked about it and talked about it before we ever thought about anything coming up.

Q. Did you know that Cilla and Esther had sold this land shortly after Madison died?

Mr. Wilhoit: Objected to as incompetent and irrelevant.

The Court: Overruled.

A. Well, I heard they had.

Q. You don't know?

A. No, I didn't know; Cilla moved away from our neighborhood.

Q. When did Cilla move away from there?

A. I don't remember.

Q. Don't you remember that date either?

A. No, I don't because I didn't pay any attention to it. I never visited after my brother's death, and I don't remember.

Q. The only date that you have paid any attention to was the date of the birth of this child twelve years ago?

A. Well, I remember that because I was sent for; if I wasn't sent for, I wouldn't remember that.

Q. But that wouldn't fix the date, would it?

A. Well, it would by me remembering being in the field where she was hoeing those potatoes.

Q. Why don't you remember some of these other dates that occurred there and even those that occurred a good while after that?

A. Well, I don't know; I didn't give it study, I reckon. I don't know.

Redirect Examination by Mr. Wilhoit.

Q. Mrs. Maxey, have you a child that was born a few months after Sam was born? A. Yes, sir.

Q. When was he born? A. He was born in 1907.

Q. How long after Sam was born?

A. The 29th of January.

Q. 1907? A. The first of the year, yes.

Q. Does that enable you to fix the date of Sam's birth by the fact that this child was born in 1907?

A. Yes, we talked about it some, of them being too late to get a filing.

Mr. Wilhoit: That is all.

Witness dismissed.

The Court: Was the limit on filing March 4th?

Mr. West: 1906.

And thereupon ANDREW JOHNSON was produced, sworn and examined as a witness for and on behalf of the United States, and testified as follows through Interpreter Maxey Simms, who was sworn to act as interpreter:

Mr. West: If the Court please, we know nothing of this interpreter. We might inquire to see if we could find an interpreter that we knew about. We know this man has been here on several occasions with these people. We don't know a thing in the world for him or against him.

The Court: Isn't—haven't you an interpreter yourself?

Mr. Wilhoit: It takes a Euchee interpreter. We brought him here, we dont' know anything about him. Legus Brown told us he could interpret. I presume Legus told us, I don't know him at all.

The Court: Do you gentlemen know of any Euchee that is available? Call another witness. Stand aside.

Witness dismissed.

And thereupon S. W. BROWN, produced, sworn and examined as witness for and on behalf of the United States, testified as follows:

Direct Examination by Mr. Bonds.

Q. You may state your name? A. S. W. Brown.

Q. How old are you, Mr. Brown?

A. Well, I can't tell you exactly but I will be seventy-five next month, I am seventy-four.

Q. Where do you live, Mr. Brown?

A. Up near Jinks, Okla.

Q. Did you know Madison Brown in his lifetime? A. Yes.
Q. What relations are you to him?
A. He was my boy, son.
Q. Did he have a boy by the name of Samuel H. Brown?
A. Yes, sir.
Q. Do you know, Mr. Brown, when this child was born?
A. I couldn't tell you exactly.
Q. So you know what time of year it was?
A. It was along in the spring, something like it.
Q. Why do you say that, Mr. Brown? A. Which?
Q. What impresses that upon you that it was in the spring?
A. He was up there building a little shed for one of my boys up there.
Q. Madison Brown was up building a shed? A. Yes, sir.
Q. For you? A. For my son.
Q. When was that?
A. It is not exactly my son, it is my wife's niece; he was building some kind of a shanty for him.
Q. In what month was that?
A. It shows in my mind that it was long about, that if I can recollect right, it was along in April. It was in the spring, I know.
Q. And at that time you ascertained that this child Samuel H. Brown was born? A. Yes, sir.

Mr. Bonds: Take the witness.

Cross Examination by Mr. West.

Q. Mr. Brown, did you have a talk with an attorney in Sapulpa, named Thurman? A. T. L. Thurman?
Q. Yes, sir; about this case?
A. Oh, I don't know; I might.
Q. That lives in Tulsa? A. I understand.
Q. You think you might have had?
A. I might have, can't tell you.
Q. Isn't it a fact that you did have a conversation with him in which he asked you about the date of the birth of this child Samuel Brown, and you told him you didn't know when it was?
A. Well, that is what I said now.
Q. What you said now?
A. I don't know the date, but he was there I know, because I was building a shed for that fellow and he went home and Mr. Swann, he was working for me at that time and he was building a house, and Madison, too; so that is the way the thing stands.

Q. That is the only thing you do know about it?
A. Yes, sir.
Q. You don't pretend to say what month the child was born?
A. Oh, I couldn't do that; I know it was along some time.

Witness dismissed.

And thereupon ESTHER BROWN, produced, sworn and examined as a witness for and on behalf of the Government, testified as follows:

Direct Examination by Mr. Bonds.

Q. State your name. A. Esther Brown is my name
Q. Esther Brown? A. Yes, sir.
Q. What relation are you to Legus Brown?
A. That is my husband.
Q. Are you acquainted with Madison Brown?
A. Yes, sir.
Q. What relation are you to him.
A. That is my father.
Q. He is dead now? A. He is dead.
Q. Do you know Samuel H. Brown? A. Yes, sir.
Q. Son of Madison Brown? A. Yes, sir.
Q. Where is he? A. He is here with me.
Q. He is here with you? A. Yes, sir.
Q. He lives with you, does he? A. Yes, sir.
Q. You know the circumstances surrounding the homestead of Madison Brown, deceased, did you or not sign a deed to that land?
A. Yes, sir; I signed a deed to it.
Q. And Cilla and Legus? A. Yes, sir.
Q. Do you know when Samuel H. Brown was born?
A. Yes, sir.
Q. Were you present when he was born? A. Yes, sir.
Q. Where were you living at the time?
A. I was living out here, out on a farm.
Q. How far from the home of Madison Brown?
A. Well, I was living right there with my father.
Q. Was living with your father? A. Yes, sir.
Q. Do you know the time of year the child was born?
A. Yes, sir.
Q. When was that? A. He was born April 23, 1906.
Q. What makes you say it was in April, 1906, Mrs. Brown?
A. Well, because I have a girl of mine, she was born December 23, 1906, and he is eight months older than her.

Q. She was born on December 23rd? A. My girl.

Q. Both born on the same day of the month, different months?

A. Yes, my girl was born in 1906, December 23.

Q. Did you ever talk about that?

A. No, sir; we never talked about it, only trouble we talked about was sizing the two children up, and my little girl was little bit taller than Sam and she is yet.

Q. Did you ever discuss with the mother or father of Samuel Brown about the enrollment of Samuel H. Brown?

A. No, sir.

Q. Is there anything else causes you to remember this was in April other than the comparison with your child?

A. Well, we were down on the creek fishing when he was born, it was in April.

Q. Down fishing the day he was born?

A. Well, we was down fishing, and she'd taken sick and went back and he was born that night.

Q. Who was with you?

A. Myself, and my mother and father, and Charlie Baker and Legus Brown.

Q. And she was sick at the creek?

A. She'd taken sick there and we'd taken her back to the house.

Mr. Bonds: Take the witness.

Cross Examination by Mr. West.

Q. Mrs. Brown, you are the wife of Legus Brown?

A. Yes.

Q. How old are you? A. I am twenty-nine.

Q. Twenty-nine years old?

A. Yes, sir; twenty-nine.

Q. In 1906, you were sixteen or seventeen?

A. I was seventeen.

Q. What time of the month is your birthday?

A. October 18th.

Q. Will you be twenty-nine next October? A. Yes, sir.

Q. Or last October?

A. I was twenty-nine last October.

Q. You were seventeen years old past? A. Yes, sir.

Q. At the time of the birth of this child? A. Yes, sir.

Q. How long after this child was born did you live there at the house of your father?

A. Well, I stayed there until 1905.

Q. 1905?

The Court: How many years did you live there after the child was born, about how many, just as near as you can remember?

A. Well, I don't know exactly, just exactly how long, but it wasn't very long after that we moved from there out on my place about a quarter from the house.

Q. How long did you live there?

A. Well, I lived there until 1908.

Q. 1908? A. Yes, sir.

Q. Where did you move then?

A. Then we moved seven miles southwest of Sapulpa.

Q. And how long did you live at that place?

A. Well, lived there until we moved to town.

Q. When did you move to town?

A. We moved to town in 1912, I think. I wouldn't be for sure; somewhere in there.

Q. Where did you live in 1911?

A. I was living in 1911, I was still living out there on the farm.

Q. That is the one south of Sapulpa?

A. Yes, sir; still living out there on the farm.

Q. Do you remember the month that you moved away from your father's place? A. No, sir; I don't.

Q. Don't remember that? A. No, sir; I don't.

Q. Do you remember the month you moved from that place to the place over there south of Bixby?

A. From south of the farm place to town, you mean?

A.[Q.] No, from the place you first moved to from your father's to the place in the country south of Sapulpa?

A. No, sir; I do not.

Q. You don't remember that either?

A. No, sir; I do not.

Q. Did you say awhile ago you made a deed to this property that is in controversy in this litigation. A. Yes, sir.

Q. When did you make that deed? A. 1911.

Q. Where were you when you made it.? A. In Bixby.

Q. I show you a paper marked Defendant's Exhibit No. 1, and ask you if that is your signature?

A. Yes, sir; it is my signature.

Q. That deed was signed in the bank at Bixby, wasn't it?

A. Yes, sir.

Q. Did you sign any other papers there that day?

A. Yes, sir, I did; I signed another paper besides that.

Q. What was that?

A. Well, I don't know what it was. Mr. Privett, we dealt with, told us it was a paper so the deed could be approved, and he didn't tell us what it was.

Q. What Privett was that?
A. Charles Privett's brother.
Q. Wasn't this Privett here? A. No, sir.
Q. He didn't tell you anything about it except it was a paper he wanted when he got the deed approved?
A. That is what he said.
Q. Did you read it? A. No, sir, I didn't.
Q. Were you there all the time of the transaction?
A. Well, I was in and out.
Q. You were in and out of the bank? A. Yes, sir.
Q. At different times? A. Yes, sir.
Q. When this paper was presented to you, who was there?
A. Well, my husband was there.
Q. He was there? A. Yes, sir.
Q. Who else was there?
A. My mother and Jim Parkinson, and Rosa Grant.
Q. Did your husband hear the conversation between you and Mr. Privett? A. Yes, sir.
Q. Did he hear Mr. Privett tell you what this paper was?
A. No, sir, because he was waiting a ways in the bank.
Q. Did your husband sign this paper?
A. No, sir, he refused to sign it.
Q. He refused to sign it? A. Yes, sir.

Mr. West: Mark this Defendant's Exhibit No. 2.

Q. I show you a paper identified as Defendant's Exhibit No. 2, and ask you if that is your signature to that paper?
A. I don't understand what you mean.
Q. I am showing you a paper which we call Defendant's Exhibit No. 2. I want you to look at it and tell me if your signature is on it? A. My signature is on it.
Q. Is Cilla Brown's signature on it? A. Yes, sir.
Q. She signed it? A. Yes, sir.
Q. In the bank at the same time? A. Yes, sir.
Q. Did you swear to that or acknowledge it before any officer? A. No, sir.
Q. You did not? A. No, sir.
Q. Did not. Did you read that paper?
A. No, sir, I did not.
Q. You didn't know what was in it?
A. No, sir, I did not; he didn't explain it at all to us.
Q. Just told you it was a paper he wanted? A. Yes.
Q. Did you know anything about a suit being brought later on about this property in the court up in Tulsa County, the Superior Court? A. Yes, sir.
Q. Did Mr. W. E. Privett come to your house at Sapulpa —I mean C. R. Privett come to your house at Sapulpa to get you to sign a disclaimer to that suit? A. Yes, sir.
Q. Did you sign it?

A. Well, I didn't sign it right then at the present time, but we taken it up to the Indian Agent's office and George McDaniel told me it would be alright to sign it.

Q. The same George McDaniel that is here?

A. Yes, sir, he is the man.

Q. You signed that?

A. Yes, sir, he said it would be alright for me to sign it.

Q. You and Cilla, each got a hundred and fifty dollars for the deed you made?

A. Yes, I got a hundred and fifty dollars, but he wanted to hold out five dollars or something, so it would be paid through the court, and my husband and he had quite an argument over it.

Q. What was it he said?

A. Five dollars something, so that the court could pay to get those papers through; I didn't understand.

Q. You didn't understand? A. No, sir.

Q. Legus got mad?

A. Yes, sir, because he wanted to hold five dollars out on him.

Q. Was that all that was said between them at this time about this paper?

A. Well, told him he wouldn't sign that paper on account he didn't make the date of that birth of that boy.

Q. He told him he wouldn't sign the paper on account of the date of the birth?

A. Yes, sir, he said it wasn't right, and that is what they got in argument about.

Q. There was more conversation there in your presence and hearing about what was in the paper? A. Yes, sir.

Q. You knew before you left the bank what was in that paper?

A. No, sir, he didn't explain to us; they got in argument after everything was set aside.

Q. You heard what your husband said about the date.

A. Yes.

Q. Then you knew there was something about the date of the child's birth?

A. Yes, and my husband says, "Well, I see you won't get the deed approved through the court."

Q. And then you all went away from the bank with Legus threatening him?

A. No, sir, my mother was drunk and we couldn't do anything with her when she was intoxicated.

Q. Your mother was drunk?

A. Yes, sir, when she signed the deeds.

Q. Who else was at the bank?

A. Jim Parkinson and Rosa Grant.

Q. Who? A. Jim Parkinson and Rosa Grant.

Q. Was your mother drunk when she signed this paper?

A. Yes, sir.

Q. This and the deed were all signed at the same time, weren't they? A. Yes.

Q. Were these papers prepared when you all went to the bank, were they ready for your signing?

A. No, sir, they was not.

Q. The deed and this affidavit were written up after you got to the bank?

A. Yes—well, the way it was, he sent Jim Parkinson over there. We went down with my mother, she generally done her trading down there. We went down there with her and she was over in the bank getting some money and Jim Parkinson came over there and says Mr. Privett wants to see you. And she says well, I haven't time to see him, if he wants to see me he can come over here. So we went in the hardware store and he come back again and so she says we will go over there and see what they want. So we went over there and he wanted to buy that property of my father's and so I told my mother I didn't think a person ought to sell it. I didn't think we ought to sell it and we didn't have to anyway. First thing you know she got in there to herself, away from us, and she said she was going to sell her part, and she jumped me about it and told me I ought to sell it. She was drinking then pretty heavy. So I says, being you insist on it, I will sell it to satisfy you.

Q. Who did you acknowledge the deed before?

A. Mr. Hornecker.

Q. Who did you acknowledge the affidavit before?

A. Nobody.

A. At all? A. No, sir, I did not.

Q. You knew afterwards that your mother was appointed guardian of this child?

A. No, sir, I don't because I didn't live with her at that time.

Q. You did sign a paper for Mr. Privett, however, at Sapulpa? A. Yes, sir.

Q. At the Indian agent's office? A. Yes, sir.

Q. The effect of that was to say you didn't have any interest in this property any more? A. Yes, sir.

Q. Did Mr. Privett tell you why he wanted to have that paper? A. No, sir, he didn't tell us anything.

Q. How did you come to sign it?

A. He just told us there was a paper to be prepared so the deed could be approved.

Q. So the deed could be approved?

A. Yes, sir, that is what he said.

Q. What deed? A. The deed we signed for him.

Q. By the County Court?

A. I expect so, that is what he said.

Q. Didn't you know that he had brought a suit up there in Tulsa County against you and your mother to settle the question of the title, didn't he tell you that this was to settle the question about the title to this land, and the age of the child? A. No, sir.

Q. Didn't say a word about that? A. No, sir.

Q. He was down at your house?

A. He never explained nothing like that to me at all.

Q. Never explained a thing? A. No, sir, he did not.

Q. Well, did Mr. McDaniel explain it to you?

A. Well, they just told me it was a deed, for me to claim all my title and interest in it; I wouldn't have anything to do with the property at all.

Q. And you wouldn't have to go to the court?

A. No, he didn't say anything about the court at all.

Q. I thought you told me just now he told you there was a suit up there, and this was in order to get something approved by the court? A. No, sir, I did not.

Q. You didn't? A. No, sir.

Q. Well, what was that you say about his telling you this was a paper?

The Court: That was in relation to the affidavit.

Mr. West: That was about the affidavit at the Bank of Bixby.

(Question read.)

Q. What time of day was it that time transaction happened at the bank? A. I don't know just what time it was.

Q. You remember that Mr. Hornecker was there?

A. Yes, sir, I remember that he was there.

Q. Didn't he take the acknowledgment to the deed that was made there that day? A. Yes, sir.

Q. But he did not take any acknowledgment to the affidavit? A. Yes, sir.

Q. You know him when you see him? Is he the same man that has been here today? A. Yes, sir.

Q. You have seen him here today? A. Yes, sir.

Q. Did Mr. Charles Privett, the man who is here, have this affidavit which I showed you a while ago, and which you said you had signed when he was down there at your house at Sapulpa?

A. Yes, he was the man down there at the house but I didn't sign right at the presence, I mean he was in the house.

Q. I know, but didn't he have this affidavit you had signed in the bank at the time he was down at your house?

A. Signed at the bank?

Q. This affidavit that you signed at the bank at Bixby, did Mr. Privett have it that day at your house he was down there in Sapulpa?

A. I don't know, he had some kind of paper; I don't know whether it was an affidavit. They stated it was a paper so I wouldn't have any title.

Q. Didn't he also have this affidavit that you had made up there in the bank at Bixby sometime before, and didn't he tell you and your husband there at your house that this suit was brought to show in open court the truth of the affidavit, if it was true, as to the time when that child was born?

Mr. Wilhoit: I believe we will object, if the court please; incompetent, irrelevant, immaterial, hearsay.

The Court: Well, whatever was stated there, this witness may state.

Mr. Wilhoit: We except.

The Court: He had a paper down there, we are talking about the time Mr. Privett came down to Sapulpa, you understand that?

A. Yes, sir.

The Court: You signed that paper, did you?

A. Yes, sir.

The Court: That was after the time you were at the bank of Sapulpa. Now, Mr. Privett had a paper with him which he wanted you to sign?

A. Yes, sir.

The Court: Did he have another paper with him besides the one that you signed that day at Bixby?

A. No, I don't remember; I just signed that one.

The Court: Don't remember whether he had another paper and showed it to you?

A. No, sir, I don't, just the one paper. My husband wasn't there at the house; he was working for the Government.

Q. Your husband didn't go down there to the house?

A. And we went up t h e r e to the office, to the Indian Agent's office, and I signed it up there before Mr. McDaniel; they told me it would be all right.

Q. Mr. Privett came down there to the house, and got you and took you up to the office? A. Yes.

Q. And your husband wasn't down there at the house?

A. Well, my husband was with us, altogether.

Q. At the office? A. Yes, sir.

Q. But not at the house? A. No, sir.

Redirect Examination by Mr. Bonds.

Q. Mrs. Brown, I notice that the name of Legus Brown is blotted out by an "X." Do you know how come that to be done; it reads "We, Cilla Brown, Esther M. Brown, Legus Brown" and Legus Brown's name is crossed out. Do you know how come—how that come to be that way?

A. Well, I guess they blotted it out on account he wouldn't sign it.

Q. Had you signed it before they asked him to sign it?

A. Yes, I did.

Q. You had signed it when he was not present?

A. Yes, sir.

Q. When he came in did they ask him to sign it?

A. Yes, sir.

Q. Then is when the controversy took place about the wrong date being in there? A. Yes, sir.

(Witness dismissed.)

And thereupon MABEL YOUNG produced, sworn and examined as a witness for and on behalf of the United States testified as follows:

Direct Examination by Mr. Wilhoit.

Q. State your name. A. Mabel Young.

Q. Where do you live, Miss Young?

A. Tulsa, Oklahoma.

Q. For whom do you work at this time?

A. The Gypsy Oil Co.

Q. As stenographer in the legal department?

A. Yes, sir.

Q. What position did you hold in October and November, 1911;

A. I was court reporter in the County Court, Tulsa County.

Q. Who was County Judge at that time?

A. Judge Gubser.

Q. Have you your stenographic notes taken in Probate No. 1094 along about the latter part of October, 1911? Or the first of November? A. Yes, sir.

Q. I wish you would turn to those notes and read the testimony taken at hearing.

A. November 3, 1911. "In the matter of the Estate of Madison H. Brown, Deceased. Probate 1904. Davidson & Williams, attorneys for petitioner. Examination of Cilla

Brown by Mr. Williams. Cilla Brown being first duly sworn testifies as follows:

Q. What is your name? A. Cilla Brown.
Q. What was your husband's name? A. M. H. Brown.
Q. Was he called Madison Brown? A. Yes, sir.
Q. Is he dead or alive? A. He is dead.
Q. When did he die? A. Sept. 20th.
Q. Last September? A. Yes, sir.
Q. You are his wife? A. Yes, sir.
Q. Did he have any children? A. This little boy.
Q. What is his name? A. Samuel H. Brown.
Q. How old is Samuel?
A. He will be six years old this April, coming.
Q. Have you any other children?
A. I have one girl, she is married.
Q. What is her name? A. Esther M. Brown.
Q. Who did she marry? A. Legus Brown.
Q. Where does she live?
A. On the east side of Kelleyville.
Q. Did you have any more children? A. They all died.
Q. But when your husband died he left you and these two children, Esther and Sam? A. Yes.
Q. No other children? A. No.
Q. This piece of land Mr. Privett is buying an interest in, describe it.
A. It is not very good land, it is nearly all alkali, nothing broke up.
Q. You are selling your interest to Mr. Privett for $150.00, is that right? A. Yes, sir.
Q. Is that a fair price for that land? A. Yes, sir.

By the Court: Q. Have they paid you the money?

By Mr. Williams: Here is the check.

Q. Do you want to take Mr. Privett's check for $150.00?
A. Yes, sir.
Q. You are willing to take it are you? A. Yes, sir.
Q. And you will to go to the bank and get the money on it will you? A. Yes, sir.
Q. And you want the court to approve the deed?
A. Yes, sir.

Check paid to Cilla Brown in open court."

Witness dismissed.

Mr. Wilhoit: If the court please, we offer in evidence certified copy of proof of heirship made September 26th, 1914, signed by Esther Brown and the little affidavit

under the proof in which they swear that they know the statements and that they are true, signed by Legas Brown and Esther Brown.

Mr. West: If the court please, this is a record of the Dawes Commission and don't purport to give anything with regard to the age of the child, Samuel H. Brown, whose allotment is in question here, whose interest in this allotment here is in question; and is merely an affidavit made for the purpose of distributing money, as I understand; has nothing to do with the question of the date and don't purport to show the date of birth.

The Court: What bearing do you conceive it has on this question?

Mr. Wilhoit: Your Honor please, as I said it is a proof of heirship made by Cilla Brown, the mother of this boy.

The Court: That is offered so far as Cilla Brown is concerned. Of course as to these other defendants, they are here. Well, that declaration of Cilla Brown, that portion of it may be admitted. That relates to the question here, the only part the court will consider is the affidavit of Cilla Brown. You may have your exception.

Mr. West: We except, yes, sir.

Mr. Wilhoit: Now, if the court please, there is one other matter. I would like to know if the gentlemen will admit this boy is not on the roll? If not, of course we want to prove that. We have it in the record already by the testimony of these various witnesses who swear he was born too late to get on the roll.

The Court: Gentlemen, is there any question about that?

Mr. West: We haven't examined them; I don't know.

Mr. Chandler: I am willing to admit that he was not on the roll but I make no admission for the other people.

The Court: It is negative testimony.

Mr. Wilhoit: We can get Mr. Angell, he has already examined the roll.

And thereupon HENRY HORNECKER produced, sworn and examined as a witness for and on behalf of the defendant, out of order by agreement of counsel, testified as follows:

Direct Examination by Mr. West.

Q. What is your name? A. Henry Hornecker.
Q. Where do you live, Mr. Hornecker? A. Tulsa.
Q. Mr. Hornecker, where were you living in 1906?
A. Well, in 1906, after July I lived at Bixby?
Q. At Bixby? A. Yes, sir.
Q. You went there in 1906?
A. Yes, sir, I was there after July, 1906.
Q. You were there in October, 1906? A. Yes, sir.
Q. What business were you in there?
A. I was in the banking business.
Q. In the banking business? A. Yes, sir.
Q. How long did you stay in Bixby?
A. Well, I left Bixby in September, 1913.
Q. Did you reside there continuously from 1906 until 1913? A. Yes, sir.
Q. What business were you in down there?
A. Banking business.
Q. What bank? A. Farmers and Merchants State.
Q. Were you in the same bank all the time? A. Yes, sir.
Q. Did you have a position as a Notary Public too?
A. I did.
Q. Did you know Cilla Brown in her lifetime?
A. Yes, sir.
Q. Did you know Esther, the wife of Legus Brown, do you know her? A. Not as well as Cilla; I know her.
Q. Did you know her in 1911? A. Yes, sir.
Q. Did you know Legus Brown in 1911? A. Yes, sir.
Q. Were you present in the bank in 1911 when some deed and an affidavit were executed by Cilla Brown, and Esther Brown, and Legus Brown?
A. There was an affidavit taken about that time.
Q. I will show you first warranty deed identified as defendants' Exhibit No. 1, purporting to be executed by Esther Brown and Legus Brown and to have been acknowledged before you, and I will ask you if you took the acknowledgment to that deed. A. Yes, sir, I did.
Q. I also show you what purports to be an affidavit executed by Cilla Brown and Esther M. Brown October 24, 1911, and ask you if you certified that instrument? A. I did.
Q. Were you present in the bank when the papers that I have just shown you were executed by these parties?
A. When they were signed?
Q. Yes, sir. A. Yes, sir.
Q. You were acquainted with all the parties who signed them at that time? A. Yes, sir.
Q. Did you know Cilla Brown fairly well? A. Yes.

Q. Did you know her well enough to know whether or not she was intoxicated when you saw her? A. Yes, sir.

Q. Was she intoxicated on the day that these deeds were acknowledged? A. No, sir, she was not.

Q. Did you at that time take an acknowledgment to a deed made by Cilla Brown, do you recall?

A. No, I don't remember just now.

Q. You can't remember? A. I can't recall about that.

Q. Were you in the bank at the time the parties were transacting these matters?

A. Well, no, they just came to me for the acknowledgment, you know.

Q. You don't know what took place there all the time they were in the bank?

A. I couldn't tell you about that, no, sir.

Q. This paper marked Exhibit No. 2, contains certificate by you that it was acknowledged by the affiant. It is not the usual form of subscription. Was that paper in fact acknowledged by them before you? A. Yes, sir.

Q. On that date? A. Yes, sir.

Q. As you certified? A. Yes, sir.

Q. I want to ask you Mr. Hornecker if there is any other reason independently of your recollection of your stating that Cilla Brown was not intoxicated at the time she executed those papers?

A. No reason, only I never took any acknowledgment for a drunk Indian in my life, or anybody else that was drunk.

Q. Would you have known if she had been drunk?

A. Yes, sir.

Q. Were you acquainted with her signature pretty well?

A. Yes, sir.

Q. Was there any difference between her signature if she was intoxicated and if she wasn't?

A. Yes, sir, any person will make a difference.

Q. Can you testify from the appearance of this signature whether or not she was intoxicated at the time she was signed?

Mr. Wilhoit: I believe we will object to that as incompetent, irrelevant and immaterial; not the best evidence.

The Court: Well, he may answer. Of course he saw the witness there. Mr. Witness, do you remember, now, the circumstance of this woman giving you that acknowledgment; have you in mind now, or do you just merely remember because your acknowledgment appears there?

A. Nothing any further than I knew that W. E. Privett was buying some land and I knew that he'd written out this

himself. He did it himself on the typewriter, and I just simply took the acknowledgment and put my seal on it.

Examination by the Court.

Q. Well, you remember now the circumstance, do you, of that transaction between these Indians and Mr. Privett and in having taken the acknowledgment and Cilla Brown having acknowledged it there?

A. Yes, sir, and this is Cilla Brown's signature.

Q. Did you ever see Cilla Brown's signature made when she was drunk? A. Well, I never seen Cilla Brown drunk.

The Court: I suppose your question is merely addressed to him as an expert as to whether a signature is different made by a person when drunk and one by the same person when sober?

Mr. West: I thought he could testify from the signature whether she was intoxicated or not.

The Court: That probably would be something for the court to draw. If he never saw her signature when she was drunk, he couldn't make the comparison.

Examination by Mr. West.

Q. Cilla Brown had made notes from time to time at your bank? A. Well, not to any great extent.

Q. You had seen her sign papers? A. Yes, sir.

Q. Frequently? A. Yes, sir.

Mr. Wilhoit: We object to him leading the witness if the court please.

Q. Did she ever sign any paper in your presence? Or before you when she was intoxicated? A. Never did.

Q. At any time? A. At no time.

Q. You never then saw her make a signature when she was intoxicated? A. When she was?

Q. Yes, sir. A. No, sir.

Mr. West: I suppose, Your Honor, we had as well offer these exhibits one and two in connection with this witness' testimony.

Mr. Wilhoit: We have no objection to the admission of the deed but we do object to the introduction of the affidavit because it is incompetent, immaterial, and doesn't tend to show or prove any issue in this case.

The Court: It is competent in connection with the testimony of this Mrs. Brown who did sign it as a state-

ment which she had made in writing as to this fact at another time under circumstances detailed in the evidence and the court will determine what, if any, weight it will have. It may be admitted; exception noted.

Cross Examination by Mr. Wilhoit.

Q. Mr. Hornecker, when did you work in the bank of Bixby? A. In July, 1906?

Q. What position did you hold? A. Cashier.

Q. Did you have stock in the bank at that time?

A. Yes, sir.

Q. What position did Mr. Privett hold in the bank?

A. Well, when he first came there I think in 1907, he was assistant cashier, and a year or two later he took some stock and was made vice-president.

Q. Did he have an interest in the bank at the time this transaction took place? A. Yes, sir.

Q. What interest did he have?

A. I could not state positively; I think about a thousand dollars.

Q. Was he an officer at the time?

A. Yes, sir, vice-president.

Q. Was he an active vice-president?

A. Well, you might say, yes.

Q. He stayed in the bank practically all of the time, made that his headquarters, did he not? A. Yes, sir.

Q. Do you remember all the circumstances of all the acknowledgments that you took for Mr. Privett while you were in the bank? A. No, not all.

Q. You stated a while ago that you didn't remember taking an acknowledgment to the deed that was executed that day? A. Well, no, not right off.

Q. The only reason you can say now that you took this acknowledgment is because it bears your signature; you have no independent recollection of the circumstances surrounding it?

A. Nothing any more than I remember Mr. Privett was buying this land.

Q. Had he told you that he was buying it? A. Yes, sir.

Q. What time did he tell you that day?

A. I don't remember.

Q. Did you hear the dispute that arose between the parties in the back part of the bank?

A. No, sir, I didn't know that there was any dispute.

Q. Did you hear Mr. Privett ask Legus Brown to sign this affidavit? A. No, sir.

Q. You noticed this affidavit contained something that was X'd out? A. Yes, sir.

Q. Was that X'd out before it was given to you for your signature? A. I think so.

Q. You don't know who did that? A. No, sir.

Q. You also noticed it has a blank line on which no one signed? A. Yes, sir.

Q. Was that there before it was presented to you for your signature? A. Yes, sir, I suppose it was.

Q. Where were you in the bank when Cilla and Esther acknowledged before you?

A. Well, I expect I was attending to the trade.

Q. Well, do you know? A. No, sir, I don't.

Q. Isn't it a fact the only reason you remember this is because it has your signature to it? A. Only what?

Q. The reason you remember that you took this acknowledgment is simply because it has your signature to it?

A. I know I took that acknowledgment because it has my signature and I remember something about it. But persons do forget those things, you know. And bring them back and remember them—and bring them back and read them over—brings back a little memory about it.

Q. Did you ever sign your name to an affidavit or acknowledgment without actually having the people swear?

A. No, sir.

Q. Cilla Brown did drink, didn't she?

A. No, sir, I don't remember seeing her drinking.

Q. How many times did you see her that day?

A. I don't know whether I saw her more than that once.

Q. You don't know how many times you saw her in the bank that day? A. No, sir.

Q. Was this land being bought by Mr. Privett for himself individually? A. Yes, sir.

Q. Did you have any interest in it?

A. No, sir, absolutely not.

Q. Did you and Mr. Privett have any dealing together?

A. Very few. I have bought some land from Mr. Privett.

Q. You didn't buy any land from allottees or heirs with Mr. Privett?

A. Not that I can recall. I know several instances where I paid Mr. Privett a profit on some land.

Q. Did Mr. Privett at this *land* deal in land extensively?

A. Not very; he bought a few pieces of land.

Q. You came to the bank, you say, in 1906? A. Yes, sir.

Q. And this was the latter part of 1906?

A. In July, I think it was.

Q. You say you knew Cilla Brown well?

A. I don't know whether I got acquainted with her right away but I knew her all the time I was at Bixby, practically.

Mr. Wilhoit: I believe that is all.

The Court: Stand aside.

(Witness dismissed.)

And thereupon W. H. ANGELL produced, sworn and examined as a witness for and on behalf of the United States testified as follows:

Direct Examination by Mr. Bonds.

Q. State your name, A. W. H. Angell.

Q. What is your occupation, judge?

A. I am clerk in charge of the Land Division in the office of the Superintendent to the Five Civilized Tribes.

Q. As such, have you in your custody all of the records of the Land Office? A. I have.

Q. And the rolls and enrollment records? A. Yes, sir.

Q. Have you investigated as to whether or not there is on the rolls a boy by the name of Samuel H. Brown, the son of Madison H. Brown? A. I have.

Q. Is there such a person on the roll? A. No, sir.

Q. You have made the investigation? A. Yes, sir.

Mr. Bonds: Take the witness.

Mr. West: No questions.

Witness dismissed.

Mr. Bonds: If the Court please, I presume it will be admitted that this is the homestead allotment of Madison H. Brown involved in this suit, and that Madison H. Brown died in 1911. It is admitted that the land involved in this suit is the homestead allotment of Madison H. Brown, enrolled opposite roll No. 4088, as a half blood.

Mr. Wilhoit: We offer the proof of heirship.

The Court: I admitted it so far as Cilla's answer to that question is concerned. You might just read that part into the record—well you may offer it all and I will consider only the pertinent part.

Mr. West: I think, Your Honor, objection is properly noted when it was first offered, but we desire to preserve the record by noting an objection.

The Court: The record may show, Mr. Stenographer, that to the exhibit just admitted the defendants object; the objection is overruled and exception noted.

And thereupon MAXEY SIMMS produced and sworn to act as interpreter, testified as follows:

Examination by the Court.

Q. What is your name, Mr. Interpreter?
A. Maxey Simms.
Q. Maxey Simms? A. Yes, sir.
Q. Where do you live, Mr. Simms?
A. I live six miles south of Bixby.
Q. Six miles south of Bixby? A. Yes, sir.
Q. Are you any kin to Legus Brown?
A. No, not as I know of.
Q. To Cilla Brown? A. No, sir.
Q. Are you any kin so far as you know to any of these people involved in this law suit?
A. Not to my knowing; if there is, I don't know.
Q. Have you any interest at all in this law suit?
A. No, sir.

The Court: You may proceed.

And thereupon ANDERSON JOHNSON produced, sworn and examined as a witness for and on behalf of the Government testified as follows, through Interpreter Maxey Simms.

Direct Examination by Mr. Without.

Q. What is your name? A. Anderson Johnson.
Q. Where do you live? A. At John Cooper's.
Q. Did you know Matt Brown in his lifetime?
A. Yes, sir.
Q. Did he know Cilla? A. Yes, sir.
Q. Do you know Madison's children? A. Yes.
Q. Do you know when Sam Brown was born? A. Yes.
Q. Where did you live, how close did you live to Matt Brown at the time Sam was born?
A. It is about a mile and a half.
Q. When was Sam born—what time of year?
A. I was plowing and we were sent for to come down to Madison's house, Cilla was sick, they said, and so we went

down and that was about the time that he was born. That was in big summer, he says.

Q. What do you mean by big summer?

A. Well, according to Indian's way, when grass grows about that high (indicating), we call it big summer, and that was about the time.

Q. Who sent for him to come down there? A. Legus.

Q. Who went down with you? A. My wife.

Q. What is your wife's name? A. Eliza Johnson.

Q. Was she any kin to Madison Brown? A. No.

Q. Any kin to Cilla? A. No.

Q. Was your wife kin to Cilla Brown?

A. She was her daughter.

Q. Were you a medicine doctor at that time, an Indian doctor at that time?

A. Yes, they had sent for me to give her some medicine, and so I give her.

Q. How long did you and your wife stay down there?

A. Wasn't there very long, it was just getting dark when Sam was born.

Q. Is your wife dead now, or living—Eliza, I mean?

A. Dead.

Mr. Wilhoit: That is all.

Cross Examination by Mr. West.

Q. Andrew, do you know when Madison Brown died?

A. I heard that he was dead but I don't know just when he died.

Q. Didn't his widow, Cilla Brown, marry somebody else after he died? A. Yes, she was married.

Q. When did Cilla marry this last time?

A. I don't know just how long it was after she was married.

Q. You know she did marry again? A. Yes.

Q. Do you know when Cilla died?

A. I don't know when she died; I knew she was married again but I don't know about the time when she died.

Q. How far did you say that you lived away from her when she and Madison were living there together?

A. Mile and a half.

Q. How long did Cilla live there at that place after Madison died? A. I couldn't say just how long it was.

Q. Did you stay at the same place about a mile and a half away from there until Cilla moved away from that place?

A. After they sold the house they came and lived with us for a while and they after that they moved on to Cilla's place and from there on to Sapulpa, and that is about where her

man was—or that is about where her man was killed, he said.

Q. What I asked him was how long he lived at the same place he was living at when this boy was born. How long after that did he stay there himself at that place?

A. Quite a while.

Q. Did Madison Brown have another child born after Samuel H.? A. There was one but it died.

Q. When was it born?

A. I don't know, I never paid any attention.

Q. Did Legus Brown and Esther have a child born while they were living at Madison's place?

A. I only know about Sam Brown's being born at Madison's. That is the only one I know.

Q. That is the only one you know about? Of any of the children? A. That is the only one.

Q. Did you visit and give any other women that had children born to them around in that neighborhood medicine at the time their children were born? A. No.

Witness dismissed.

Mr. Wilhoit: If the Court please, I presume there will be no objection, be no dispute about the various deeds and instruments involved in this litigation. Is that right, Mr. West?

Mr. West: I think not, but I don't know about some of them you set up in your petition. But the ones we are relying on, there is no dispute about. I think you have the dates correctly. We have certified copies of them here.

The Court: Have you copies of the deeds you are seeking to cancel?

Mr. Wilhoit: We have a memorandum abstract. They are set out in the bill showing the dates, and grantors and grantees, and filing date, and also the date and page.

The Court: What is the state of the answers?

Mr. Wilhoit: My recollection is they all admit it.

The Court: Well, if they are admitted, there will be no question of their existence and it probably will be unnecessary to encumber the record by offering the instruments now.

Mr. Wilhoit: We would like to reserve the right to introduce certified copies.

The Court: We will not go into that tonight. The pleadings may be examined and if there is any necessity of getting certified copies, they may be gotten and the record supplied.

Mr. West: I have certified copies of the deed on which we rely.

The Court: Have you any further proof?

Mr. Wilhoit: I believe we rest, if Your Honor please.

The Court: You gentlemen may proceed.

Mr. Chandler: Does anybody on any side dispute our departmental leases?

Mr. Wilhoit: We are willing to admit it.

Mr. Chandler: Do you gentlemen admit it?

Mr. West: I think the dates are sufficiently shown. We have made no controversy, I suppose it is a fact.

The Court: Well, this case, in view of the statement made by counsel at the opening, this case is being tried and will be tried on the theory that the departmental lease now held by this oil company, is admitted by all parties to be a valid and existing lease on this property, and that whatever the Court may do with relation to any other instruments, this departmental lease held by the oil company will be recognized as a valid existing instrument, and will in no event be cancelled by any decree that the Court may enter.

Mr. West: Your Honor is entirely mistaken. The question of the execution of the lease we know nothing about, and have no disposition to throw that into question. But of course its validity is another proposition because that depends solely upon the questions of law and fact involved in the issues we are trying; if we had no title to the property then it would probably result that the departmental lease is good. But if we have title to the property as we claim, then there was nothing for the department or anybody else to act upon.

The Court: I misunderstood the position of you gentlemen, because I got the impression that your deed was taken subject to this lease.

Mr. West: Subject to the commercial lease, Your Honor.

The Court: Well, then, you are not admitting the validity of their existing lease.

Mr. West: Not as an instrument that conveys any-

thing to them. It is a valid lease if the title still remains in the people who made it.

Mr. Chandler: I would like permission to put the stipulation in the record that the departmental leases plead in our supplemental answer were executed on the date and by the parties set out in our answer.

The Court: Have you in your answer set forth what purports to be a copy of that departmental lease? If you have it may be examined by counsel and probably there will be no question about the copy being a true copy.

Mr. Wilhoit: A copy of it is attached to the answer.

The Court: Now, will there be any question about that being a true copy?

Mr. Wilhoit: I haven't examined it.

Mr. West: The defendants Crosbie and Mitchell are willing to admit that the copy of lease attached to the supplemental answer of the oil company is a true copy of the departmental lease and was executed at the time shown.

The Court: Then at the proper time that copy attached to the answer of the oil company may be offered and will be admitted in evidence as the departmental lease upon which the oil company relies, subject of course to the objection you gentlemen may have as to its validity. That probably clears that feature up. If you desire for the oil company to offer that at this stage the Court will admit it.

Mr. Chandler: Well, after the plaintiff had rested, I was just getting it in because that will be all I have to offer.

The Court: Well, inasmuch as the record now refers to that lease, suppose that it be offered now and admitted right with this colloquy and the record will be complete on that.

Mr. Chandler: The defendant, Oil Production Company, offers in evidence the copies of the two departmental leases which are attached to the supplemental answer, filed on behalf of the defendant on April 5, 1916. The reason there are two leases, is one is executed by the guardian and another lease executed by the widow and adult daughter.

The Court: That may be admitted under the stipulation of counsel that they are correct copies of the originals and may be admitted in place of the originals. You may proceed.

And thereupon JOHN O. MITCHELL, produced, sworn and examined as a witness for and on behalf of the defendants, testified as follows:

Direct Examination by Mr. West.

Q. Your name? A. John O. Mitchell.
Q. Where do you live, Mr. Mitchell? A. Tulsa, Okla.
Q. Where were you living in 1913? A. Tulsa.
Q. You are one of the defendants in this action?
A. Yes, sir.
Q. Mr. J. E. Crosbie is also a defendant?
A. Yes, sir, he was a partner of mine in the purchase.
Q. Do you claim any interest in the property that is involved in this controversy? A. Claim the fee.
Q. When did you acquire that interest?
A. In August, 1913.
Q. Will you state the circumstances under which it was acquired?
A. Yes, sir. Mr. Jack Cleary at that time was in the real estate business in Tulsa, and in August, August 2nd, he brought me the property and offered me this 40 acres of land in fee for a thousand dollars. I paid fifty dollars ernest money, subject to the approval of the title. He stated that the court proceedings had been conducted by Judge Brechenridge and Mr. Brown, and had been passed, so I didn't worry any on that, but came to the conclusion that in order to play safe, I had better find if all the heirs were represented. So I told Mr. Cleary to bring me an affidavit.

Mr. Wilhoit: I think we will object to this line of testimony.

The Court: I hardly see, Mr. West, how that is throwing any particular light on the question now, as to what this man thought. What did he do, and what was the record.

Mr. West: I asked him simply to state the circumstances; I didn't know he would give quite as much details.

Q. The property was brought to you by Mr. Jack Cleary?
A. Yes, sir.
Q. And did you look into the matter at that time?
A. The title.
Q. And what did you find?
A. I found that the title had been passed by competent attorneys, and satisfied myself as I just stated, with an affidavit showing that these were all the heirs.

Mr. Wilhoit: We object.

The Court: Well, overruled. We will not go any further into that.

Q. Did you obtain an affidavit from any persons with reference to that matter?

A. Mr. Jack Cleary obtained it for me.

Q. Have you the original of that?

A. No, I haven't. It is filed, though; it is in the abstract.

Q. Did you file it for record? A. Yes, sir.

Q. I will show you what purports to be a copy of an affidavit in an abstract and ask you if that is the one you obtained at that time? A. Yes, sir.

Q. You say that is a copy of that affidavit? A. Yes, sir.

Mr. West: We offer a copy of the affidavit in question, set out in the abstract as Defendant's Exhibit No. 3.

Mr. Wilhoit: We object, if the Court please, because it is incompetent, immaterial, not the best evidence and doesn't throw any light on this case at all. There isn't a thing in there to show a thing when this boy was born; wholly immaterial. Don't hurt anything.

The Court: Well. I will probably hear you gentlemen in argument as to the effect of this. I will admit it.

Mr. Wilhoit: We except.

Mr. West: Your Honor, may this be copied into the record so it will not be necessary to read this affidavit?

The Court: Yes.

Mr. West: Shall I read it in now? Or have it done?

The Court: Perhaps you had better read it into the record now.

And thereupon Mr. West read the affidavit referred to into the record, as follows:

"We, the undersigned, first duly sworn, state that we are and have been personally acquainted with Madison H. Brown, deceased, whose name appears opposite Creek Roll No. 4088, and we further state that the said Madison H. Brown, was never married but one time and that was to Cilla Brown, and we know that Madison H. Brown, and Cilla Brown, have had four children born to them, viz: Esther M., Sammie, Nettie and Samuel H. Brown, and we know that Sammie Brown and Nettie Brown, are both dead, neither of them was ever married and left no issue. We further state that we know there were one or two other children born, but such children died in infancy, and were never named. We have known

the said Madison and Cilla Brown, for a period of some fifteen to twenty-five years. The deponent further sayeth not. (Signed) Charles Bailey, Harry Frank. Sworn and subscribed to before me, Harry W. Worsham, a Notary Public, this the 4th day of August, 1913. (Signed) Harry W. Worsham, Notary Public." On the left hand side is written the word "Seal." "Commission expires April 14, 1917."

Q. Did you pay any consideration for that conveyance?

A. A thousand dollars.

Q. A thousand dollars. Did you at the time that you made that conveyance know of any defect of any kind or character in the title to this property?

A. No, sir, didn't know any.

Q. Were you aware at that time that there was an existing oil and gas lease on the property? A. Yes, sir.

Q. Who was associated with you in the purchase of this property?

A. Mr. Crosbie. He wasn't at Tulsa at the time I made the purchase and we were partners in some real estate and I bought the property and just carried him in with me.

Q. Did he have anything to do with the transaction at all? A. No, sir.

Q. You handled all of it? A. Yes, sir.

Q. He didn't know about it until you say it had been done?

A. He was north some place and I informed him after he got back.

Q. Now, the oil and gas lease upon the property when you bought it, was not the departmental lease that has just been put in evidence by the Oil Production Company?

A. No, sir.

Q. That was a lease that had been given by whom and to whom?

A. It had been given by Mr. Privett to Wilcox and assigned by Wilcox to the Oil Production Company.

Q. And that is the commercial lease mentioned in the Government's bill here, and which they ask to have cancelled?

A. Yes.

Q. At the time you bought this property in August, 1913, was there any production on it? A. No, sir.

Q. This hadn't been developed for oil and gas at that time? A. No, sir.

Q. Do you know in whose possession the property was at that time? A. At the time I purchased it?

Q. Yes. A. Mr. Privett, the man that sold it to me.

Q. Which Mr. Privett was that?

A. That was W. E. Privett, I believe.

Q. Well, was it the one that is in California, or the one that is here?

A. My understanding, the one that is in California. I know the one in California was there to see me, but Mr. Cleary negotiated the sale and I didn't see the man at all.

Q. If this abstract shows that C. R. and Amy Privett made you the deed, then you are mistaken about that?

A. That is the deed Mr. Cleary brought me but I didn't know the Mr. Privett at that time. Mr. Cleary did all the business.

Q. You say you didn't negotiate through them?

A. No, sir. The deed was delivered to Mr. Cleary.

Q. The money was actually paid? A. Yes, sir.

Q. That was in August of 1913? A. Yes, sir.

Q. About when after that was there any development on the property, when was any oil produced?

Mr. Wilhoit: We object as incompetent, irrelevant and immaterial, Your Honor please.

The Court: If it didn't occur until after the sale was made, why go into that?

Mr. West: It seems to me it has a bearing upon the credibility of these witnesses here, contrasting their former conduct with the conduct after the discovery of oil upon the property.

The Court: Alright.

A. Sometime in——

Mr. Wilhoit: We object.

A. In 1914.

Q. In the year 1914?

A. 1914, yes; I didn't refresh my memory on that but I have the *runs* that I could look into and see but it was sometime in 1914.

Q. Do you recall now, whether that was before the departmental lease that has just been put in evidence was executed? A. Before.

Q. Before that? A. Yes, sir; quite a while.

Q. Did either you or Mr. Crosbie have anything to do with the taking of that departmental lease?

A. No, sir, had nothing whatever.

Q. You bought your title subject to the commercial lease?

A. Yes, sir.

Q. And you took no part in that—did you find out until after it had been done that the departmental lease had been made?

A. No, sir, I didn't know it until after it was done.

Q. Have you handled this entire transaction yourself as between yourself and Mr. Crosbie?

A. Well, he hasn't had anything to do with it, or I haven't either, after they begun to run the oil; they sent Mr. Crosbie his royalty and I got mine.

Q. Up to that time, Mr. Crosbie had personally transacted none of the matters? A. No, sir, not at all.

Q. At the time you bought, did you rely upon the record that was exhibited to you of a suit in the Superior Court of Tulsa County, in which that Court purported to have quieted the title to this land? A. Yes, sir.

Mr. Wilhoit: We object to that as immaterial, calling for a conclusion.

The Court: Well, it may stand; your exception may be noted.

Q. Did you ever prior to the institution of this suit by the Government hear anything about the question of whether or not this Samuel H. Brown was born in February, 1906?

A. No, sir, I never heard anything about it until after Mr. McDaniel came to me, some time subsequent to the time they discovered oil on it, and wanted me to cancel my deed.

Mr. Wilhoit: We move that that be stricken.

The Court: Overruled.

Mr. Wilhoit: Exception.

Q. That was after oil had been discovered? A. Yes, sir.

Q. You had never heard of that proposition before?

A. No, sir, I never heard it.

Q. What Mr. McDaniel was that?

A. The young Mr. McDaniel that was here, George, I believe it was.

Q. He was the man who was at that time the District Agent down at Sapulpa? A. Yes, sir.

Q. That was before the suit was actually begun by the Government? A. Quite a while.

Q. That was the first you had ever heard of it?

A. Yes, sir.

Mr. Wilhoit: If the Court please, Mr. Mitchell had a conversation with the Government agent prior to the institution of this suit and we would like to interrogate the witness as to that. Mr. McDaniel has not been called as a witness as yet, and he is not a party to this suit, but he was acting in the capacity of District Agent and we would like to interrogate the defendant.

The Court: Are you going to use Mr. McDaniel?

Mr. West: We are not.

The Court: Well, of course anything Mr. McDaniel might have said in the capacity of an officer of the Government, possibly wouldn't bind the Government or have any effect on this case as far as the Government is concerned. I don't know of course, what the proposed conversation is. You might ask your questions, and we will see. I just make the general suggestion that anything that Mr. McDaniel might have said or any admission he may have made would not bind the Government in this case, so far as the Government's interest is concerned, or the interest of these parties as represented by the Government.

Mr. West: They may ask the witness.

Cross Examination by Mr. Wilhoit.

Q. Mr. Mitchell, prior to the time you purchased this land, you made no investigation yourself as to the title?

A. Only the abstract?

A.[Q.] You had some attorneys to do that?

A. Mr. Brown and Mr. Abbott.

Q. You don't know what they did in examining this title?

A. Just the record was all I went by.

Q. What did the record contain at that time?

A. Well, contained the proceedings of the court.

Q. Of the Superior Court? A. Yes, sir.

Q. Does it contain the proceedings in the County Court, or do you know?

A. No, I dont know about that; I know I went over it and Mr. Brown handled the court end, Judge Brown, and I had confidence in both of them, and just passed it up on that.

Q. You made no inquiry yourself to find whether the child was born before or after March 4th?

A. Oh, no; it never occurred to me there was any fraud.

Witness dismissed.

Mr. Wilhoit: If the Court please, there was one Exhibit I forgot to put in. We have a certified copy of the probate proceedings in cause No. 1094, which *if* the approval proceedings of Cilla Brown's deed.

The Court: That is the proceedings pursuant to the testimony which was offered this afternoon?

Mr. Wilhoit: Yes. This testimony was transcribed and filed in the case and is a part of the record.

Mr. West: Isn't that the same testimony she read?

Mr. Wilhoit: Yes, sir, but there is nothing in the record showing that this was transcribed by her. She was reading from her stenographic notes.

The Court: Unless it is shown that this was brought to the attention of these interested parties it wouldn't be competent, anyhow, as notice to them.

Mr. Wilhoit: The purpose of it, if the Court please, they might be bound by any record as to the condition of this title.

The Court: Does that properly come in the chain of title?

Mr. Wilhoit: This is the approval of the deed from Cilla Brown to Mr. Privett, and contains the affidavit of Mr. Privett, the order of court approving the deed and the testimony.

The Court: I will admit it. I presume you defendants except?

Mr. West: We will except.

The Court: It is the record as it existed in the County Court relating to the approval of the Cilla Brown deeds to Mr. Privett which was a part of the record at the time Crosbie and Mitchell bought from Privett, and they contend this should have put Crosbie and Mitchell on notice.

Mr. West: They don't make any pretense that this evidence was written up and was on file at that time.

Mr. Wilhoit: Yes, sir, that is the purpose of putting it in here. It shows a transcript of the evidence in that court, filed Nov. 3, 1911, G. W. Davis, Clerk.

The Court: Well, there is a very serious question whether any evidence filed in the case would be considered as a part of the record unless it is affirmatively shown that it was brought to their attention. Well, I am going to admit it, gentlemen, with the suggestion now that unless you convince me that the evidence is rightfully a part of the record it will be given no consideration in the determination of this case. I will admit it and give these gentlemen an exception.

Mr. Wilhoit: This will be Government's Exhibit No. 3.

And thereupon court took a recess until 9:30 o'clock May 16, 1918.

And thereafter at 9:30 o'clock, May 16, 1918, the court reconvened pursuant to adjournment and the following proceedings were had:

Mr. Wilhoit: If Your Honor please, all of these instruments are admitted in the answer of Mitchell and Crosbie, we would like to supply certified copies of all the instruments in the bill there sought to be cancelled.

The Court: The record may be supplied with certified copies.

And thereupon C. R. PRIVETT produced, sworn and examined as a witness for and on behalf of the defendants, testified as follows:

Direct Examination by Mr. West.

Q. What is your name? A. C. R. Privett.

Q. Where do you live Mr. Privett?

A. Bixby, Oklahoma.

Q. How long have you lived in Bixby?

A. Well, I have lived there continuously from April, 1911, I believe.

Q. I understand you had lived there sometime before?

A. Yes, I had lived there but I had been away three years until that time.

Q. Since the 11th of April, 1911, you have lived at Bixby?

A. Yes, sir.

Q. Are you related to W. E. Privett? A. Brother.

Q. Where is W. E. Privett?

A. Well, he is in Long Beach, California.

Q. When did he go to California?

A. Well, if I remember he went there in October, 1912.

Q. Do you remember what is the date of the deed that he made to you of the property that is in controversy in this action?

A. Well, I wouldn't remember, only it was just before he went away. He contracted tuberculosis and the doctors advised him to get out as quick as he could, and he deed- over all of his property to me, and left, and I am sure it was just a short time before he left that he made this deed.

Q. You do remember the fact that it was in October, 1912, that he went to California. A. Yes, sir.

Q. Has he ever been back to this county since then?

A. No, sir.

Q. You were present in Bixby, except such times as you were away on business, during the month of October, 1911?

A. Yes, sir.

Q. Did you have anything to do with the original transaction by which your brother acquired the property that is in controversy from Cilla Brown and Esther Brown?

A. Absolutely nothing.

Q. You have been present in the courtroom during the progress of this trial, have you? A. Yes, sir.

Q. Did you hear the testimony of Legus Brown with reference to a transaction supposed to have occurred on the evening of October 24th, 1911, in which he said that you went to him at somebody's drug store and told him that Cilla Brown was at the bank drunk, and wanted him to come and get her?

A. Yes, I heard what he said about it.

Q. Did any such *such* transaction as that ever occur?

A. Well, I don't think so. I have absolutely no recollection of ever talking to Legus Brown or even knowing Cilla Brown or anything at all that I can remember having any conversation about.

Q. At that time? A. At that time, yes, sir.

Q. And for a considerable time thereafter did you have anything to do with them? A. No, no.

Q. You got your deed, you say, in October of 1912, from your brother? A. Yes, sir.

Q. Are you the man who executed the commercial oil and gas lease on the premises in controversy? A. I am.

Q. To whom did you execute that?

A. Well, I made the deal with Mr. H. F. Wilcox, but I won't state positively whether the lease was made direct to Mr. Wilcox, or through him to some other company, but as I remember the lease I made was to Mr. Wilcox.

Q. After the making of that lease did you institute any proceedings or take any steps with regard to the title of this property? A. Yes, sir.

Q. What did you do?

Mr. Wilhoit: If Your Honor please, we object to all this.

The Court: I suppose this is to show that he instituted this suit?

A. Yes, sir.

The Court: You may proceed.

Mr. Wilhoit: We except.

A. What was the question, sir?

Q. The question was whether you took any proceedings, after you had made this lease to Mr. Wilcox, or about the time you made the lease?

A. Yes, it was after; well, you might say at the time. Mr. Wilcox told me that the company——

Mr. Wilhoit: I believe that we will object to any conversation that took place as hearsay.

The Court: Oh, well, this is before the Court.

Mr. Wilhoit: We will withdraw the objection.

A. Well, the company had taken the lease with the understanding that I would bring this suit and I brought the suit, got Mr. Brown.

Q. What suit?

A. The suit to quiet title, or establish the title, particularly of this Samuel H. Brown.

Q. Did you employ any attorney for that purpose?

A. Yes, sir.

Q. Who? A. Mr. George T. Brown.

Q. Was the suit instituted? A. It was.

Q. After that suit was instituted, did you see either Legus Brown or Esther Brown, or both of them?

A. I saw them both.

Q. Where did you see them? A. Sapulpa.

Q. About when was that, do you recollect?

A. Well, I dont know that I could just fix the date. It was just before this suit was heard in court, a few days.

Q. That is just a few days before the matter was disposed of in court? A. Yes, sir.

Q. The suit had already been instituted?

A. The suit had been filed.

Q. Where did you see Legus Brown, if you saw him?

A. Well, I went over there to see Legus' wife. From the way I understand, Legus was interpreter at the District Agent's office and I went up to the office and found him there. I first talked to Legus and told him what I wanted, that I had brought a suit to quiet this title, and that the oil company instead of having an affidavit title as to the age of this way, they wanted a court record title and I told him I wanted his wife to either appear as a witness in the case or I had a disclaimer that Mr. Brown had prepared and she could sign that if she chose. Then I talked to Mr. McDaniel, and Legus

and I then walked down to his house and talked to his wife and she signed this disclaimer.

Q. Do you remember whether you had with you at that time the affidavit that Esther Brown and Cilla Brown had made in 1911 at Bixby? A. I am pretty sure I did.

Q. Did you exhibit that to them or tell them the contents of it?

A. I am not sure I exhibited it to them, I think I did; I am not sure about that. But I am sure I went thoroughly into the details as to the nature of this suit, as to what it was for and all about it. I am sure there couldn't have been any misunderstanding.

Mr. Wilhoit: We object to that as a conclusion, if the Court please.

Q. Did I understand from what you said that you told them just what had been done by them before that and what you were doing in court?

A. Yes, sir, I told them the shape I had found this title, and that I had an affidavit his wife had made several years before that regarding the age of this boy, and that the oil company that had taken the oil lease wasn't satisfied with that proof, they wanted me to bring a suit to quiet title. In fact we talked about that one question and that is all we did talk about.

Q. Did you do that in the presence of Esther down there at the house? A. Yes, sir.

Q. Did she sign this disclaimer at that time?

A. Yes, sir.

Q. Do you remember whether that was executed in the house or whether she went back with you and Legus to the District Agent's office?

A. No, I wouldn't say positively about that. I thought she signed it down at the house but she might have gone down to the District Agent's office.

Q. She signed it? A. Yes, she signed.

Q. Did you have any conversation with Cilla Brown prior to the time that you brought that suit? A. No.

Q. Well, did you have any conversation with her immediately after you brought the suit or a short time after you brought the suit—before the suit was actually heard in Judge Breckenridge's court at Tulsa? A. Yes, I had.

Q. Where was that, Mr. Privett?

A. That was in the lobby of the courthouse where I talked with her.

Q. What was that conversation?

A. Well, I will tell you the first conversation was that while I was over in Sapulpa, the day I went over to see Legus

and Esther, I met Billy-boy Brown, that is a brother to Madison H. Brown, and he was talking about this suit and he told me he didn't think this woman had a right to sell this land; and while he didn't profess to know much about it personally, he talked in a way to make me think there might be something wrong. I went back, I told Mr. George T. Brown when Cilla Brown came over there for him to drill her pretty thoroughly and find out if she was mistaken or had intentionally told anything wrong about this boy's age, and then I talked to her in the lobby of the courthouse. I asked her about her family and her children and so on, and so forth, and I asked her about this boy, and her statements to me was just the same as she had made in the affidavit. That satisfied me beyond any doubt at all that she was lying about it. And that is the only conversation that I ever had with her.

Q. With Cilla in regard to it? A. Yes.

Q. You are the man who executed the deed to Crosbie and Mitchell? A. Yes, sir.

Q. You received the consideration from them?

A. Yes, sir.

Q. Had you at any time previous to this conversation you had in the lobby in the courthouse with Cilla Brown taken her to the office of George T. Brown?

A. Well, I think maybe I did before this, that is about this time. I am not just positive about that but I remember being at George T. Brown's office one time when Cilla was there but now as to fixing the time, it was sometime about this time, though.

Q. During the process of the institution of this suit, or in connection with this suit, you did take her to Mr. Brown's office? A. Yes, I believe I did.

Q. Do you remember why you took her there?

A. Well, it was something about this suit, but just what particular phase it was, I don't remember.

Q. Do you remember whether she executed any paper or not while she was there in Mr. Brown's office at that time?

A. I think she did execute an affidavit probably. Yes. Mr. Brown had written an affidavit, as I remember, and then Cilla had come, and he left all the dates blank, and when she came in, he asked her, and as she told him, he filled it out with the pen, is about all I remember about it.

Cross Examination by Mr. Wilkett.

Q. Mr. Privett, who went to Mr. Brown's office besides Cilla; there was some Indian, wasn't there, some Indian man?

A. I am not sure whether he did or didn't.

Q. Didn't a man by the name of Ousley go with you?

A. No, I don't think Ousley ever went with me anywhere. I think her husband, Long, might have been with us. I don't think Mr. Ousley was ever with me anywhere.

Q. How long had you lived in Bixby prior to October 24, 1911?

A. Well, I moved to Bixby as I remember, about 1905, or '6 and lived there a short while, and I went away and I was gone until, I believe, April, 1911.

Q. What business were you in in 1911, you were in the livery business?

A. I was in the horse and mule business.

Q. Legus put up his team with you all the time when he come to town?

A. Well, there was lots of people in and out of there and I wouldn't say when or where I first saw Legus Brown to know who he was.

Q. You did talk to him, though, while you were living there at Bixby, quite often?

A. No, not quite often. I remember talking, he would come in and put up his team or get his team.

Q. And you knew Cilla Brown?

A. Well, I don't just remember what time I first knew who Cilla Brown was. Of course after this matter came up I got acquainted with her and knew her quite well.

Q. Your brother was in the bank there? A. Yes, sir.

Q. Did you know anything about this deal for this land along about the time? A. Absolutely not.

Q. When was the first time you ever heard your brother had bought this land?

A. The first time I ever knew anything about it, that is that I remember of, was the time my brother deeded this land over to me.

Q. Did he deed all this property to you? A. Yes.

Q. Did he deed it to you outright or did you just handle it for him? A. I just handled it for him.

Q. He still owned it? A. He still owned it.

Q. When the land was deeded to you in 1911 it was deeded to you for the purpose of taking care of it, and selling it, and leasing it, and so forth? A. Yes.

Q. So you really didn't own it in 1911 when you took the title from your brother? A. No, sir.

Q. Mr. Privett, had anyone ever questioned this title prior to the time when you brought this suit?

A. Not that I know of.

Q. What did you want to bring this suit if you had this affidavit? A. I didn't want to bring it.

Q. Why did you do it?

A. I done it to satisfy this oil company. As I started to tell you a while ago, Mr. Wilcox says, "I will handle this lease providing you will agree to bring a suit to quiet title."

Q. Did you show him the abstract on this land?

A. Yes, sir.

Q. Mr. Privett, isn't it a fact that you brought this suit to clear the title because you knew Cilla had testified in the probate proceedings that Sam was born in April, isn't that the reason you brought this suit? A. No, sir.

Q. You did know she testified to that?

A. I didn't know it until yesterday. I didn't know there was anything like that, no, sir.

Q. You had this affidavit, though, didn't you, at the time?

A. Yes.

Q. Did you show that to Mr. Wilcox?

A. Well, the affidavit as I remember was in the abstract.

Q. You didn't show him the original affidavit?

A. I think it was in the abstract.

Q. And still he required a suit to be brought before he would accept your lease?

A. They accepted the lease and paid me for it with the understanding that I would bring this suit.

Q. Yes, sir. Why did you think, or did you think a suit in the Superior Court would make your title any more sound?

A. Personally I didn't think anything about it.

Q. Did Mr. Wilcox tell you why he wanted this suit brought in the Superior Court? A. Yes.

Q. What was his reason?

A. His reason was his attorney demanded a court record title instead of an affidavit.

Q. Didn't you have a court record title when you had those deeds approved by the County Court?

A. Well, of course that was a court record title but that was just the demand that he made on me.

Q. That is the only reason Mr. Wilcox gave you? A. Yes.

Q. Had anyone ever questioned the title of this piece of property prior to that time? A. Not that I ever knew of.

Q. And still you complied with those terms when you knew you had a good title?

A. Well, I tell you, I didn't know much about title, and I don't yet.

Q. Did you have an attorney pass on the title?

A. My brother just turned it over to me.

Q. Who represented you at that time as an attorney in all your legal proceedings?

A. Well, I didn't have any regular attorney, and I didn't have very many legal proceedings. But when I did—all the

times, all along since 1900, I have had Harry Campbell act for me.

Q. Did you ask Mr. Campbell to look over this abstract before you showed it to Mr. Wilcox?

A. No, I didn't ask Mr. Campbell to look over it. It was my brother's land and I suppose he had his attorney, I didn't doubt the title.

Q. You did agree with Mr. Wilcox you would have this suit brought in the Superior Court and spend a hundred or two hundred and fifty dollars when you thought you had a good title?

A. There wasn't anything said about what court it was to be brought in, but I did agree to have Mr. George T. Brown to bring the proceedings.

Q. What about Mr. Brown, did he say anything about the title before he brought the suit?

A. I think he looked over the abstract.

Q. Did he tell you he thought he had a good title?

A. Well, I don't remember what he said about it.

Q. You knew at the time this land was sold to you that your brother had taken an agricultural lease at the same time he took this deed, didn't you?

A. No, my brother's business and my business were absolutely distinct, and I didn't know anything about his business any more than if he hadn't been any kin to me.

Q. According to the records, your brother had taken a five-year agricultural lease at the same time he took this deed?

A. Well, I don't know that he ever had anything at all; that is, that he had ever taken a lease. The deed is all that I remember about.

Q. Did you know that prior to the time you brought this suit? A. *No* what?

Q. Know your brother had taken a lease at the same time he took the deed? A. Well, if I did, I don't remember.

Q. When did you first get an abstract on this land?

A. My brother had an abstract at the time he deeded it over to me, as I remember it.

Q. Did you ever examine that abstract yourself?

A. No, I wouldn't rely on my own judgment on an abstract.

Q. Well, you had glanced through the abstract?

A. I didn't as I remember. That is, I don't have any remembrance of having looked through any abstract.

Q. You did know Sam Brown wasn't on the roll?

A. No, I didn't then.

Q. Did anyone ever call your attention to that fact?

A. About the time this suit was brought they did.

Q. Who did that? A. Billy Brown.

Q. Who is Billy Brown? Any relation of Madison Brown?

A. Brother as I understand.

Q. That was before this suit was brought?

A. No, it was after the suit was brought.

Q. Did Billy Brown tell you at that time anything about when the boy was born?

A. I don't think he claimed to know when the boy was born but he did intimate that he thought this boy was born too late to get an allotment.

Q. You did have notice of the fact at that time that there was some question about this title? A. Yes, that much.

Q. Did you tell Mr. Crosbie and Mr. Mitchell at the time you sold this land that that question had been raised?

A. No, I don't think I did.

Q. Did you tell them why this suit was brought?

A. Mr. J. K. Cleary, of Tulsa, made this deal, and I never talked to Mr. Mitchell or Mr. Crosbie, either, at the time I made this sale. Mr. Cleary had me execute a deed and he paid me the money himself.

Q. Did anyone ask you why this suit was brought?

A. I don't think so.

Q. Did Mr. Cleary ask you?

A. He might have but I don't remember any discussion that I had with him.

Q. Did you talk with the attorneys for Mr. Mitchell or Mr. Crosbie about this land? A. I don't think.

Q. You don't remember whether you did or not?

A. Well, I am pretty sure I didn't.

Q. You say you had a conversation with Cilla Brown in the courthouse? A. Yes, sir.

Q. When was that?

A. The day she testified before she went on the stand.

Q. You had her brought over there, didn't you?

A. Well, yes you might say I did.

Q. You had some Indian there go out and bring her over to Tulsa?

A. No, I don't think—I think I wrote her a letter.

Q. She didn't have an attorney there that day, did she?

A. I don't think so.

Q. Now, did Esther Brown have an attorney?

A. No, sir.

Q. Who was appointed guardian ad litem for this boy?

A. Luther James.

Q. Did you take Cilla Brown to his office and let her talk to her? A. No, sir.

Q. Is Mr. Luther James there now in Tulsa? A. Yes, sir.

Q. Didn't you tell Cilla Brown in that conversation she

had already made an affidavit about this boy and this suit was really a friendly suit to clear the title? A. No.

Q. You told her that in substance? A. No, not that.,

Q. What did you tell her about it?

A. I said Cilla, if you swore a lie in that affidavit, don't go and swear another one. I said Billy Brown intimated this boy was born after the rolls closed. And I said I have never been a party to anything that was crooked, and if that isn't right, I want you to correct it. And she went into the matter, and said "I guess I know when my kid was born." Those were the very words.

Q. Who was present?

A. There wasn't anyone that I know of.

Q. You took her off by herself?

A. No, I just sat down by her in the courthouse.

Q. And no one heard it?

A. Mr. Brown heard the same thing.

Q. How much did you pay Cilla when this suit was brought? A. I paid her expenses; ten dollars, I believe.

Q. You didn't pay her any more consideration for the land? A. No, sir.

Q. Did you pay the man's expenses that went out after her?

A. I don't remember of sending anyone after her. I wrote her a letter, as I remember, that the suit was brought, and was set for a certain day, and I think I sent a check for ten dollars; she told me she didn't have any money to get over there on.

Q. Did she tell you in that conversation, she had testified in the probate court this boy was born in April?

A. She didn't say a word about the probate court. She just said "I guess I know when my boy was born." I have the affidavit and it corresponded exactly with what she testified to, and that cleared my mind pretty well that there wasn't anything wrong with it.

Q. You notice in the affidavit that Legus Brown's name had been put and a blank line left for him to sign there?

A. No, sir, I noticed those crosses there.

Q. You noticed the blank line right there?

A. Well, yes, I guess I did.

Q. Did you ask Legus why he refused to sign that affidavit?

A. I don't think so. I don't think I ever was impressed that he refused to sign it.

Q. Now, you say you went down to Sapulpa to see Legus and Esther. Why did you go down there to see them?

A. Well, as I remember, Mr. Brown told me I could go down there and if Esther wanted to sign this disclaimer that

she could, or else give her notice of the trial and she could come and testify.

Q. Didn't you serve a subpoena on Esther?

A. I don't remember about that.

Q. As a matter of fact a subpoena was issued and served on Esther? A. I don't remember.

Q. You knew you could get judgment against her if she didn't appear without the disclaimer?

A. I did that at the suggestion of my attorney, that she ought to appear or disclaim.

Q. You told Esther the same thing you told Cilla about the reason this suit was being brought?

A. Well, I told them the reason the suit was brought was to establish the title.

Q. You didn't tell them then, it was a friendly suit to clear the title?

A. *The* wasn't anything said about being f r i e n d l y or unfriendly. Of course, I wasn't mad at anybody, it was just a matter on my part to comply with my agreement and to establish this title. I don't know that anything was said about it being a friendly suit, or anything like that. I remember telling them they wanted to establish the title in court instead of by affidavit.

Q. Didn't you tell them you already had those probate proceedings and that full blood approval?

A. I didn't tell them about any probation matters.

Q. You had an abstract?

A. I think Mr. Brown had the abstract at the time; I don't think I ever looked at it. Don't remember it if I did.

Q. Did you show this affidavit to George McDaniels when you were down at Sapulpa?

A. I don't know whether I showed it to him; I think I told him about it.

Q. Mr. Privett, in that conversation you had at Sapulpa with Legus Brown and Esther, and probably in the presence of George McDaniel, I will ask if you didn't tell Esther at that time that she had already sold this land but still you wanted a disclaimer because some fellow had raised some question about the title to this land? A. No.

Q. Didn't you tell her she had really sold it?

A. Well, yes; I might have said something about that.

Q. And therefore she didn't have any interest and therefore you wanted a disclaimer?

A. No, I told her like I said a while ago, that there was a suit brought, and I think may be I showed her this affidavit.

Q. You told her she had already sold her interest?

A. I don't remember saying she had sold her interest, but I knew she had, and she did, too, so far as that is con-

cerned. The only thing I had in mind when I went over there was to give her the privilege of signing this disclaimer if she chose, or else let her come and testify.

Q. You say the only thing you had in mind, the principal thing was to get this disclaimer signed?

A. Well, if she wanted to sign it.

Q. And you paid her ten dollars to sign it?

A. I don't remember.

Q. Well, you remember whether or not you paid her that money?

A. Well, I tell you she said something like this; she might want to come over to the trial; her mother was coming down, and Legus come to me that she would want some money if she did want to go to the trial.

Q. And you did pay her ten dollars? A. I think I did.

Mr. Wilhoit: That is all, if the court please.

Redirect Examination by Mr. West.

Q. Mr. Privett, when you talked to Cilla Brown about this man Billy Brown, intimating that this boy was born after the rolls actually closed, what did she say?

A. Well, she said he lied, that is what she said.

Q. Did she say anything more about her relation with him?

A. Yes, she went on, and said something about Sam Brown had always got what they had, and Billy Brown—I don't remember just was she said; I didn't pay much attention to that. But anyway, she said she knew when her children were born and she recited the date of this boy's birth, and I remember looking at the affidavit and it was the same date that she had testified in that.

Q. Did she say anything about any reason that this fellow would have for trying to change the matter now that they had sold the land?

A. Well, she said quite a bit, but I wouldn't just say exactly everything that she said. I know the gist of it was that she knew when this boy was born, and that she knew more about it than anybody else.

Q. This man, you say, never had told you that he knew as a matter of fact when the boy was born?

A. How is that?

Q. This man, Billy Brown, never had claimed that he knew?

A. If he did, he didn't say. He didn't say very much about it. I had just a short conversation with him and told him what I was doing over there and he just made some re-

mark about he thought that boy was born too late for an allotment, or after the rolls closed, or something that way.

Q. That is what you stated to Cilla there? A. Yes.

Mr. West: That is all.

Recross Examination by Mr. Wilhoit.

Q. Did anyone else testify in that suit at Tulsa besides Cilla Brown? A. I don't think so.

Q. You didn't bring any other witness there? A. No.

Witness dismissed.

Mr. West: If the court please, the defendants, Mr. Crosbie and Mr. Mitchell, desire to introduce a certified copy of the record of the probate proceedings showing the appointment of Cilla Brown as guardian and the proceedings with regard to the sale of the minor's interest to this land in the Probate Court.

The Court: They may be admitted.

Mr. Wilhoit: We object, if the court please, because it is incompetent and immaterial. We haven't seen it. It doesn't tend to prove any issue in this case.

The Court: Well, as I understand, it is just a probate proceeding with regard to the sale of this land by Cilla Brown, the full blood.

Mr. West: This is the child's interest, Your Honor, through the probate court of Tulsa County and of course, if he could convey, this was a proper proceeding. It has a further bearing because it shows the notices that were given.

The Court: It may be admitted.

Mr. Wilhoit: We except.

And thereupon GEORGE T. BROWN, produced, sworn and examined as a witness for and on behalf of the defendants, testified as follows:

Direct Examination by Mr. West.

Q. Mr. Brown, what is your full name?

A. George T. Brown.

Q. Where do you live? A. At Tulsa, Oklahoma.

Q. What is your business? A. Attorney at law.

Q. Where were you living in the early part of the year 1913? A. At Tulsa.

Q. How long have you been in Tulsa?
A. Since 1906, the early part of the year 1906.
Q. Practiced law there during that entire time?
A. Yes, sir.
Q. Do you know the defendant C. R. Privett?
A. Yes, sir.
Q. Do you know the land that is in controversy in this case? What land it is?
A. I have in mind the 40-acre tract of land, the allotment of Madison Brown, I believe. I don't know anything about the character of the land.
Q. Were you employed by Mr. Privett, Mr. C. R. Privett, in the year 1913, to take any action or do anything with regards to this piece of property. A. Yes, sir.
Q. What was that employment?
A. He employed me to bring suit to quiet title on this particular piece of land.
Q. Did you institute such suit? A. Yes, sir.
Q. In what court?
A. Superior Court, of Tulsa County, Okla.
Q. Did you see Cilla Brown before you brought the suit or about the time you brought the suit in connection with the bringing of it?
A. I saw an Indian woman who was introduced to me as Cilla Brown, who said that she was Cilla Brown, yes, sir.
Q. Where did you see her? A. At my office.
Q. Who brought her? A. Mr. C. R. Privett.
Q. Did you talk with her with reference to the question of the birth of the child Samuel H. Brown? A. I did.
Q. Do you remember what she stated to you with reference to him?
A. She told me the data of her family history and executed an affidavit embracing the facts to which she had related to me.
Q. I show you a paper and ask you if that is the affidavit you have reference to?
A. Yes, sir, that is the affidavit I have in mind.
Q. There are some matters filled in in that affidavit in somebody's handwriting, whose handwriting is that?
A. That is mine.
Q. Was the affidavit signed by Cilla? A. Yes, sir.
Q. In your office? A. Yes, sir.
Q. Was this affidavit prepared in your office?
A. Yes, sir.

Mr. West: I will ask the stenographer to identify that paper as Defendant's Exhibit No. 4, and if the court please we offer in evidence the affidavit of Cilla Brown referred to by the witness.

The Court: It may be admitted.

Q. Mr. Brown, some of the things that are in this affidavit as I said just now, are written in with a pen. I will ask you if looking at it, you recall whether or not the type-written portion of it was prepared before Cilla came there to your office?

A. Yes, sir, as I recollect it, Mr. C. R. Privett had an affidavit which had been executed by Cilla prior to this time, and in my judgment it wasn't a full and complete statement of the family history as was necessary and with the aid of that affidavit, I dictated this affidavit and the stenographer transcribed it, and these dates that are blank in here, didn't appear in the other affidavit as I recall, and after she came in, why I got the information from her, and filled in the dates.

Q. As to those things? A. Yes, sir.

Q. With reference to the date of birth of Samuel H. Brown that appears to have been written in there in typewriting?

A. That appeared in the original affidavit.

Q. Did you interrogate her on that proposition when she was in your office?

A. Yes, sir, I asked her about the facts, and that fact particularly, because as I recall it that was a particular fact in issue.

Q. Were you present in court, Mr. Brown, when the suit that you have referred to was heard in the Superior Court?

A. Yes, sir, I represented the plaintiff, took the testimony.

Q. Did you hear Cilla Brown testify in that case?

A. Yes, sir, she testified and I heard it.

Q. What did she testify to in that case?

Mr. Wilhoit: We object, if the court please, because it is incompetent, immaterial and not the best evidence.

The Court: What Cilla said?

Mr. Wilhoit: Yes, sir; it was taken down and is a part of the record.

The Court: Well, I know, but if this man heard her say, it is a statement by the mother of this child.

Mr. Wilhoit: It is not the best evidence.

The Court: Why not?

Mr. Wilhoit: If they had a stenographer, he took it down.

The Court: I know, but that doesn't preclude a witness on the stand here, who says he was in the court room and heard the testimony from stating what she stated. Overruled.

Mr. Wilhoit: Exceptions.

A. She testified then the same facts that appear in this affidavit about the date of the birth of this child.

Q. At the time of the trial of this suit, up to that time, had you ever heard of any testimony given by Cilla Brown to the contrary?

A. No, sir; all I had ever seen was the affidavit Mr. Privett brought.

Q. When was the first time you ever knew of any testimony to the contrary given by Cilla Brown in the County Court of Tulsa County?

A. When I heard Miss Mabel Young read it in court.

Q. Did Mr. C. R. Privett here tell you anything prior to the hearing in the Superior Court of Tulsa County about the conversation he had had with this man Billy Brown?

A. I think he mentioned it. I think he mentioned it to me, yes.

Q. Do you remember when?

A. I believe the day of the trial, the day the case was set, I mean while we were waiting for the court to come.

Q. Did he say anything to you about talking with Cilla about that proposition?

A. Yes, sir, he said he had talked to her.

Mr. Wilhoit: We object to what he said.

Q. Did you talk to her? A. I don't recall talking to her.

Q. To refresh your memory, I will ask you if Mr. Privett didn't request you to talk to her on that very proposition, so if there was anything wrong about this, you would find it out and go no further with the matter?

A. He may have said that but I don't have any recollection of it except him telling me he had talked with her. And there was nothing in that conversation which caused me to believe her testimony was other than what she had heretofore given.

Q. Mr. Brown, you are attorney as well as witness in this case, and I would like for you, if you recall anything—any transaction that has a bearing on the matter that I haven't mentioned, I will ask you to state to the court.

A. I will state my first connection with the matter was in the early part of the year 1913; I know that by refreshing my recollection from examining these court records in the Superior Court, and at that time I regarded it as rather a formal matter to establish a fact in connection with this title, and I know my charge which I made to Mr. Privett was merely nominal. He stated it was a matter in which as far as he knew there would be no controversy, and he exhibted to me these

affidavits and stated that someone with whom he was dealing wanted a court record title rather than an affidavit title, and I asked him about the matter to get the facts in mind in order to handle the suit, and asked him if he could get hold of the mother. He said the mother had made this affidavit. I recall then I stated to him that the mother ought to know better than anybody else about the birth of the child.

Mr. Wilhoit: Your Honor, we object to all the conversation between Mr. Brown and his client.

The Court: It probably will not throw any particular light upon the question. Objection sustained.

Q. Anything further, Mr. Brown?

A. Well, not at this time that I recall except matters relating to this suit which appear in the transcript of testimony and in this affidavit.

Q. You have never had any connection with the transaction of any sort prior to the early part of the year 1913 when you were employed to bring this suit?

A. Never had heard tell of it.

Q. Your knowledge of these transactions is derived entirely from the matters you have gotten from other parties?

A. Absolutely.

Q. Did you ever see Legus Brown or Esther Brown in the court room?

A. I don't recall. I don't recall ever seeing this young man here. I believe I did see some Indian woman with Cilla, but I wouldn't say whether it was Esther or not.

Cross Examination by Mr. Wilhoit.

Q. Mr. Brown, you say you were employed by Mr. Privett? A. C. R. Privett.

Q. You were not employed by Mr. Wilcox at that time?

A. No, sir.

Q. Did Mr. Privett explain to you that he had made an agreement to sell an oil and gas lease on this land and that was the purpose for having this suit brought?

A. I don't recall. My recollection is that he wanted it brought to quiet title.

Q. Did he tell you someone had questioned the title?

A. I don't recall that he said.

Q. Don't remember him telling you that?

A. No, sir, my recollection is that there had been no question up until that time.

Q. Did you examine the abstract at that time?

A. I don't remember seeing the abstract

Q. Did you know anything about these probate proceedings on the full blood approval?

A. No, sir. I understood it had been approved.

Q. You knew that the title from Cilla had been approved by the probate court? A. Yes, sir.

Q. You knew that the sale had been made through the probate court? A. Yes, sir.

Q. But you didn't examine the record in the probate court? A. No, sir.

Q. What was your object, Mr. Brown, in taking an additional affidavit from Cilla relative to the birth of this boy, if she had already made one?

A. Well, I don't recall the particular object except to get at the facts; I believe Mr. Privett stated that she was in town that day, or he would bring her in.

Q. Do you know who came in with her?

A. No, sir, I don't recollect.

Q. Didn't an Indian by the name of O. Hull?

A. I don't know.

Q. E. L. Ousley?

A. I don't know an Indian named Ousley. I know a man by the name of Ousley, at Bixby.

Q. Do you remember Mr. Ousley coming in with Cilla?

A. No, sir.

Q. Did he ever come to your office with Cilla Brown?

A. Not that I recollect.

Q. You remember only Mr. Privett coming in with Cilla?

A. That is all. There may have been some other Indian woman with her at the time.

Q. You don't know of course what Mr. Privett had stated to Cilla Brown prior to bringing her to your office?

A. No, except I recollect he came first, and then went back and brought her.

Q. The same day?

A. The same day or a day or two afterwards.

Q. Did he tell you when he first talked to you what he wanted you to do and what the trouble was?

A. Yes, he wanted me to bring suit to quiet title on this land.

Q. Mr. Brown, when Cilla was in your office there at the time she signed this affidavit, did you tell her she had already made an affidavit in which she had said this boy was born on February 23rd? A. I don't think so.

Q. Did you show her that affidavit?

A. I don't recollect it.

Q. You did have that affidavit in your possession?

A. I had seen it. It may have been with me. I don't recall whether Mr. Privett left it or took it with him.

Mr. Wilhoit: I believe that is all.

Redirect Examination by Mr. West.

Q. Mr. Brown, I ask you a question, if Mr. Privett hadn't told you about a conversation he had had with this man Billy Brown in which a doubt had been suggested about the correctness of the date. I understand you say Mr. Privett had told you? A. Yes, sir.

Mr. Wilhoit: We object to that if the court please. That is double hearsay, any conversation between Mr. Privett and his attorney.

Mr. West: I am asking this question to meet a question that the gentleman himself asked. He asked if there had ever been a suggestion of a doubt.

The Court: Overruled.

Q. You say he had?

A. I think so, that is my recollection.

Q. Do you recall when Mr. Privett reported that to you?

A. Oh, it was about the time this suit was had, was being tried.

Q. You couldn't now absolutely [say] whether it was after you had filed your petition and when you were up there at the court house getting ready for trial—getting ready to try it or whether it was sometime previous?

A. No, sir, I couldn't.

Q. What I am getting at is this: Up to that time, whenever that happened, if you had any intimation from any source that there was any doubt? A. Not any, no sir.

Q. You said, I believe you didn't know whether at that time you had brought this suit or not? A. I don't recall.

Q. With reference to the time, however, it is a fact, isn't it, it was either just at the time you were bringing this suit or between the time the suit was filed and the day of hearing?

A. Yes, sir, it was about that time.

Q. Do you remember about how long before you brought this suit, Mr. Privett came to you, to see you about it?

A. Oh, just shortly.

Q. Just a few days? A. Yes, sir.

Q. So it couldn't—you couldn't have had any intimation, if that was the first you had, of any doubt about the title until just about the time this suit was brought? A. Yes, sir.

Mr. West: That is all, I believe.

Witness dismissed.

Mr. West: Defendants Mitchell and Crosbie now offer in evidence a certified copy of transcript of the testimony of Cilla Brown, given in the Superior Court of Tulsa County, in cause No. 930, being the testimony in the suit which the witness Brown has testified about.

Mr. Wilhoit: Your Honor please, we object to it because it is incompetent and immaterial. On the same grounds we object to all the proceedings in the Superior Court as not binding upon the plaintiff in this case.

The Court: It is offered as a statement which she made in relation to the fact now being tried here. Of course that is an entirely different bearing from what effect the judgment might have.

Mr. Wilhoit: It is admitted for that purpose?

The Court: It is only admitted for that purpose as I understand it.

Mr. West: At this time, Your Honor, that is all the bearing it has.

The Court: That is a statement of Cilla Brown, the mother, which the defendants offer as a part of their proof. We have excepted all through this case various statements which Cilla is said to have made. Now, if that is the only objection to it, it will be admitted for that purpose, and that is the only purpose that the court sees that it could serve. There is one point of course, a very serious question, of whether a certified copy of the transcript of the evidence in the case is strictly admissible.

Mr. West: I wanted to get the record absolutely clear on that proposition before we got through. It was agreed to on yesterday that instead of having the reporter who took this testimony come down here, the record would be agreed to as a true copy.

The Court: I understand then, that o b j e c t i o n is waived?

Mr. Wilhoit: Yes, sir.

The Court: I think it is competent on the other. Exception.

Mr. Wilhoit: We save an exception, if Your Honor please. I would like to ask Mr. Brown one question.

The Court: Just ask him right there.

Mr. Wilhoit: Mr. Brown, when you were working on this title for Mr. Privett, you had knowledge of the fact that this minor's interest in this land had been attempted to be sold through the probate court?

A. I think I had notice of it. I think he told me he purchased all the interest, and this suit was simply to quiet the title as I understood.

Mr. Wilhoit: That is all, if the court please.

Mr. West: If the court please, our Exhibit No. 1 or No. 2, is an affidavit signed by both Cilla and Esther Brown, it is Defendants' Exhibit No. 2, it is introduced after being identified by Esther and we desire it to be understood that it is reintroduced now, as the affidavit of Cilla also; it having been identified by the notary before whom it was made.

The Court: Yes, and there is evidence to the effect that that is Cilla's signature. I think her signature has been proven.

Mr. West: I want it understood it is now offered as a statement of Cilla.

The Court: It may be admitted.

Mr. West: It isn't in fact an affidavit at all; it is certified by an acknowledgment before the notary. Defendants Crosbie and Mitchell now offer in evidence a certified copy of the record in cause No. 930 in the Superior Court of Tulsa County, being the proceedings brought by Mr. George T. Brown, attorney in behalf of the defendant C. E. Privett, to quiet the title to this land, including the petition and the appointment of a guardian *ad litem* for the minor defendant Samuel H. Brown, the answer of the guardian *ad litem*, disclaimer Cilla Brown, the disclaimer of Esther M. Brown, and the journal entry or judgment in that cause, said record being certified as a true copy by the court clerk of Tulsa County, and the question as to the certification of it in any other form than this has been waived by counsel for the plaintiff. They do wish to object, I understand, on another ground.

Mr. Wilhoit: We agree with Mr. West on account of Judge Breckenridge not being there, we would admit that this record was properly certified if it was admissible, but the plaintiff does object to the admission of it because it is incompetent and immaterial, and an attempt to introduce the record of the Superior Court wherein different parties were plaintiffs and defendants from the parties plaintiffs and defendants in this suit.

The Court: I suppose these are now offered in support of that feature of the defense set up in the answer which on motion had been stricken?

Mr. West: Yes, Your Honor, and raises again the question of the effect of the judgment of the Superior Court of Tulsa County, upon the issue as to whether or not the child, Samuel H. Brown, was born before or after the 4th of March, 1906, and notwithstanding the fact that Your Honor has heretofore ruled in this cause on this proposition, unless your mind is so firmly fixed as not to be susceptible of change, we would like to be further heard upon the proposition.

The Court: Well, my mind is pretty well fixed on the proposition. I appreciate that the Circuit Court of Appeals has established that I am very likely to err. My view of it has been this and it is largely based on what was announced in the Heckman case, that in these cases where the United States is bring[ing] a suit to cancel instruments which it asserts are made in violation of the Acts of Congress relating to restrictions, that the judgment of any state court wherein the allottee was a party and in which the United States did not appear in any way, either through a representative of the Secretary of the Interior or otherwise, that such judgment in the state courts are not conclusive of that question in a suit brought by the United States in this court. If you gentlemen briefly desire to be heard on that matter further, I will hear you.

(Argument by counsel.)

The Court: I appreciate, of course, the uncertainty of these titles if the contention which the government makes here is sound. I appreciate that a purchaser who buys these lands has to do the best he can to arrive at what the facts are and that, if the contention which the government makes here is sound, that however carefully he may investigate the matter and however conclusive his investigation may be of the facts which establish the alienable character of the land, still he takes his chances of the government bringing a suit subsequently if it conceives that the facts are different from what his investigation establishes, but I can't get away from the view that under the Heckman case and the Boling case that even this question of fact, in view of the interest which the Supreme Court has now established that the government has in these matters, even this question of fact is one with regard to which the United States can not be concluded by any suit in the State Court to which the allottee was a party and to which the United States was not a party. I shall sustain this objection and give you gentlemen an

exception. That is the view which has crystallized in my mind and I will follow my former ruling in the case.

Mr. West: If the court please, we have offered and you have refused this record. We except to that ruling and ask that the document be incorporated in the record in full.

The Court: That will be the record. The document offered to which objection has been sustained will be incorporated in the record as an offer on the part of the defendants to make that proof. Your exception will be noted.

Mr. West: If Your Honor please, with the exception of the testimony of Mr. W. E. Privett, who is in California, that is all the defendants have to offer. We would like to have the court hold this matter in suspension for a sufficient length of time to enable us to take Mr. Privett's deposition.

The Court: That will only relate to what transpired in the bank there?

Mr. West: Yes, as far as I know.

Mr. Wilhoit: Your Honor, please, I think we will have to object to that because it would prevent us from putting on testimony in rebuttal. I mean because we are very liable to lose Legus Brown, Your Honor know- why, and he is the person we would have to use.

The Court: Yes, but as I have suggested, you have pretty fully covered this case with Legus Brown so far as his recollection of this case is concerned. How soon can you get this deposition?

Mr. West: I am sure it can be done inside of thirty days.

The Court: Where is the witness Brown located now?

Mr. Wilhoit: Camp Travis, he has to be back by the 17th.

The Court: I will postpone the case ten days for the purpose of taking this man's deposition and if it isn't taken within that time it will be considered as closed.

And thereupon LEGUS BROWN, recalled in rebuttal, testified as follows:

Direct Examination by Mr. Wilhoit.

Q. Your name is Legus Brown? A. Yes, sir.
Q. You were on the stand yesterday in this case?

A. Yes, sir.

Q. Now, I present to you Defendant's Exhibit No. 2, and ask you if that is the affidavit that was presented to you in the bank of Bixby on October 24th, 1911?

A. Yes, sir, this is the affidavit.

Q. When that affidavit was presented to you, was your name still in the body of the affidavit? A. Yes, sir, it was.

Q. And that was scratched out after the affidavit was presented to you? A. Yes, sir.

Q. And that is the affidavit you refused to sign because it had the incorrect date as to the date of the birth of Samuel H. Brown? A. Yes, sir.

Mr. West: If the court please, we object to repeating his evidence.

The Court: The court won't consider this double testimony as having any additional weight. My mind is clear this man testified in regard to that.

Mr. Wilhoit: That is all I wanted to ask him about this anyway.

The Court: Any cross?

Mr. West: No cross examination.

Witness dismissed.

Mr. Bonds: On receipt of the deposition of Mr. Privett, there is one witness we may want to use, and if so, we will have him here immediately after receipt of the deposition by Mr. West.

The Court: Well, you had better take the rest of this proof by deposition. I will give these parties a reasonable additional time. The deposition of W. E. Privett, if taken at all, will be taken within fifteen days, and of course, upon notice; the deposition to be taken upon five days' notice to counsel for the Government of the time and place of the taking, and the Government will be given ten days after the date of the taking of the deposition of W. E. Privett within which to take such depositions in rebuttal, if any, as it may desire to take, upon a *light* notice of five days to counsel for the defendants.

GOVERNMENT'S EXHIBIT NO. 1.

"Andson Johns Died May 21, 1903. Saml. H. Brown Apr. 23 1906. 7:30 p. m.: Mary Brown born June 25, 190.. Died 1910, June 16.

..... Johnson paid ..... 1905."

Gov. Ex. No. 2.—CTD 5-15-18

PROOF OF HEIRSHIP.

Esther Brown, P. O., Sapulpa, Okla., of lawful age, being first duly sworn, according to law, deposes and says that she is one of the surviving relatives and heirs at law of Madison H. Brown, who was a citizen of the Creek Tribe, Roll No. 4088; that the said Madison N. Brown departed this life at or near Sapulpa, in the County of ....., in the State of Oklahoma, on Sept., 1911, being 42 years of age at the time of his death.

The affiant further swears that the following is a true, correct and complete statement of the family history of said decedent, and shows who are the sole and only heirs at law.

Was the deceased allottee married or single? married. If married, give name of husband or wife Cilla Brown, P. O., Newby, Okla., who was a citizen of ..... Tribe, Roll No. ..... Is such husband or wife now living? Living. If dead, give date of death Yes. If married more than once, so state, giving names and Roll Nos. married once Did deceased allottee ever have any children? Yes. If so, how many? .....

If deceased allottees had children, name all of them, whether enrolled or not, both living and dead, and give all information called for in the following blanks:

Name of Child, Esther M. Brown; Age, 25; Degree Indian Blood, ¾; D. C. Roll No., 4090; Postoffice, Sapulpa; Living or Lead, Living; If Dead Give Date, ...

Name of Child, Sammie Brown; Age, ...; Degree Indian Blood, ¾; D. C. Roll No., 4091; Postoffice, ...; Living or Dead, dead; If Dead Give Date, Aug. 18-1902.

Name of Child, Mathew Brown; Age, 2; Degree Indian Blood, ¾; D. C. Roll No., None; Postoffice, ...; Living or Dead, dead; If Dead Give Date, March 16-1896.

Name of Child, Annie Brown; Age, 2; Degree Indian Blood, ¾; D. C. Roll No., None; Postoffice, ...; Living or Dead, dead; If Dead Give Date, May 1898.

Name of Child, Nettie Brown; Age, 10; Degree Indian Blood, ¾; D. C. Roll No., 4092; Postoffice, ...; Living or Dead, dead; If Dead Give Date, Aug. 4-1910.

Name of Child, Clarna Brown; Age, 2; Degree Indian Blood, ¾; D. C. Roll No., None; Postoffice, ...; Living or Dead, dead; If Dead, Give Date, July 13-1903.

Name of Child, Samuel H. Brown; Age, 8; Degree Indian Blood, ¾; D. C. Roll No., None; Postoffice, ...; Living or Dead, Living; If Dead Give Date, ...

Name of Child, Mary Brown; Age, 1; Degree Indian Blood, ¾; D. C. Roll No., None; Postoffice, ...; Living or Dead, dead; If Dead Give Date, June 16-1910.

State below whether or not deceased children left descendants:

Name of Deceased Son or Daughter. Name of Child, ...; Age, ...; Degree Indian Blood, ...; D. C. Roll No. .....; Postoffice, ...; Living or Dead, ...; If Dead Give Date, ...

Name of Father and Mother, Samuel W. Brown, Father; Age .....; Degree Indian Blood ½; D. C. Roll No., ...; Postoffice, Jenks, Okla.; Living or Dead, Living; If Dead Give Date, ...

Name of Father and Mother, Neosha P. Brown, Mother; Age, ...; Degree Indian Blood, ...; D. C. Roll No., ...; Postoffice, ...; Living or Dead, dead; If Dead Give Date, May 14, 1897.

Name each brother and sister, whether living or dead and give the information called for in the blank forms. If half brother or sister state whether maternal or paternal.

Names of Brothers and Sisters, ...; Brother or Sister, ...; Age, ...; Degree Indian Blood, ...; D. C. Roll No. .....; Postoffice, ...; Living or Dead, ...; If Dead Give Date, ...

State below if any deceased brothers or sisters had children. Name each one, whether living or dead and give the information called for in the blank form.

Name of Deceased Brother or Sister. Name of Child, ...; Age, ...; Degree Indian Blood, ...; D. C. Roll No., ...; Postoffice, ...; Living or Dead, ...; If Dead Give Date, ...

If the father or mother of the decedent is dead and said decedent had no brothers or sisters, give the information called for in the three groups of blanks following:

Name of Grandfather and Grandmother (Paternal Grandfather, Paternal Grandmother), ...; Age, ...; Degree Indian Blood, ...; D. C. Roll No., ...; Postoffice, ...; Living or Dead, ...; If Dead Give Date, ...

Name each Uncle and Aunt, whether living or dead, and

indicate whether Paternal or Maternal. Give all information called for in the following blanks:

Name of Uncles and Aunts; .....; Uncle or Aunt, ...; Age, ...; Degree Indian Blood, ...; D. C. Roll No., ...; Postoffice, ...; Living or Dead, ...; If Dead Give Date, ...

State below if any deceased Uncles or Aunts had children. Name each one whether living or dead and give the information called for in the blank form.

Name of Deceased Uncle or Aunt. Name of Child, ...; Age, ...; Degree Indian Blood, ...; D. C. Roll No., ...; Postoffice, ...; Living or Dead, ...; If Dead Give Date, ...

Did the decedent leave a will or wills disposing of any part of his or her allotment or homestead? No.

If the decedent was a Creek Citizen did he or she have any surviving children born after May 25, 1901? Nettie Claren Brown, Both Dead.

Did the decedent leave any surviving children born since March 4, 1906? Yes, Samuel H. Brown.

Esther Brown

Subscribed and sworn to before me this 26 day of Sep., 1914. R. P. Harrison, Clerk

(Seal) By Geo. M. McDaniel, deputy.

We, the undersigned, of lawful age, being first duly sworn according to law, depose and say that we fully understand the facts and statements made in the attached and foregoing affidavit of Esther Brown; that we are personally acquainted with the affiant and are witnesses to *his* signature, and also were acquainted with said Madison H. Brown, deceased, and we know that the above and foregoing shows all the heirs of said deceased allottee, who have any interest, right, or title in his or her allotment or homestead.

Legus Brown, P. O. Sapulpa, Okla.
Occupation, U. S. Indian Policeman.

Cilla Brown, P. O. Newby, Okla.
Occupation, Housekeeper.

Subscribed and sworn to before me this 26 day of September, 1914. R. P. Harrison, Clerk.

(Seal) By Geo. M. McDaniel, deputy.

(Stamped Endorsement:) I, the officer in charge of the office of the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, having the care and custody of the rec-

ords thereof, do hereby certify that the above and foregoing is a true and correct copy (except as to disbursements made thereunder) of said instrument now on file in this office. Dated at Muskogee, Oklahoma, Apr. 19, 1918, 191... (Signed) Joe H. Strain, Acting Superintendent for the Five Civilized Tribes. (Seal)

Gov. Ex. No. 3.—CTD 5-15-18

State of Oklahoma, County of Tulsa—ss. In the County Court.

I, Frank Ingraham, Court Clerk, of Tulsa Co., Oklahoma, do hereby certify that the instruments hereto attached are full true and correct copies of the Petition for Approval of Deed, Order approving deed and Transcript of evidence as same appears of record in Probate cause No. 1094 in this office and that same are copies of all papers and the entire record in said cause. No. 1094.

Frank Ingraham, Court Clerk.
By Raymond Hoagland, (Signed)
Deputy.

State of Okla., Tulsa County. In the County Court. In the matter of the application of W. E. Privett for approval of Deed—ss. Case No.

Comes now the petitioner W. E. Privett, and represents and shows to the Court that one Madison H. Brown, a citizen of the Creek Nation died a resident of what is now Tulsa County, Oklahoma, in the year 1911, possessed of the North East Quarter of the South East quarter of Section Four (4), Township Sixteen (16) North of Range Thirteen (13) East the said land being in what is now Tulsa County, Oklahoma; that the said Madison H. Brown left surviving him as his sole heirs at law, his wife Cilla Brown, his son, Samuel Brown, and a Daughter Esther M. Brown, that upon the death of the said Madison H. Brown, the said heirs becamse seized by inheritance of the deceased land.

Petitioner further states that on the 24th day of Oct. 1911, Cilla Brown one of the said heirs made and executed a deed of conveyance to said petitioner, the said North east quarter of the South east quarter of Section Four (4), Township Sixteen (16) North of Range Thirteen (13) East; that the consideration paid *ny* your petitioner to said grantor was One Hundred and Fifty and No/100 Dollars ($150.00), which sum is a fare and adequate price for said land.

Wherefore, your petitioner prays that the said deed ex-

ecuted on the 24th, day of Oct. 1911, by the above mentioned heir conveying to your petitioner W. E. Privett, the said described premises be by this court confirmed and approved.

(Signed) W. E. Privett.

State of Okla., Tulsa County—ss. In the County Court.

W. E. Privett being first duly sworn upon his oath states, that he is the petitioner above mentioned; that he has read the above petition and that the statements therein contained are true, as he verily believes.

(Signed) W. E. Privett

Subscribed and sworn to before me, Henry Hornecker, a Notary Public, this 24th day of Oct. 1911. (Signed) Henry Hornecker, Notary Public. My commission expires July 28th, 1914.

(Endorsed) 1094 E. Petition for approval of deed, from W. E. Privett to the Judge of the County Court of Tulsa County, Oklahoma. Petition for Approval of Deed. County Court, State of Oklahoma, County of Tulsa. Filed Nov. 3, 1911 G. W. Davis, Clerk.

State of Oklahoma, County of Tulsa. In the County Court. In the Matter of the Estate of Madison H. Brown, Deceased.

Order Approving Deed of Cilla Brown to W. E. Privett.

It appearing to the court from the petition of W. E. Privett filed herein, that he is a resident of Tulsa County, Okla., that during the year of 1911, Madison H. Brown died intestate seized and possessed of an inheritable fee simple title in and to the NE4 of the SE4 of Section Four (4), Township 16 North of Range 13 East containing in all 40 acres more or less, situated in Tulsa County, Oklahoma; that the same was a portion of the allotment of the said Madison H. Brown, deceased, that the said Madison H. Brown died as aforesaid in Tulsa Co., Okla., at the age of 42 years, that he left surviving him as his sole heirs at law Cilla Brown, Esther M. Brown and Samuel Brown, wife, daughter and son of the said Madison H. Brown, deceased, that the said Cilla Brown, wife and heir at law became the owner upon the death of the said Madison H. Brown of an undivided one-third (1/3) interest in and to the above described allotment of the said Madison H. Brown, in consideration of the sum of $150.00 executed and delivered her certain warranty deed to W. E. Privett under and by which she conveyed *a;; pf jer* undivided one-third (1/3) interest in said lands described to the said W. E. Privett; that said deed was executed as the free and

voluntary act and deed of the said Cilla Brown; that consideration named therein is ample and sufficient.

The premises considered it is therefore Ordered, Adjudged and Decreed by the court that the said deed executed by the said Cilla Brown to the said W. E. Privett as aforesaid, be and the same is hereby approved and declared valid.

In Witness Whereof I have hereunto set my hand this 25th day of October, 1911.

(Signed) N. J. *Gibson*, County Judge.

Endorsed: P. J. T.—288 1094 E. Order Approving Deed. In the matter of the approval of a deed from Cilla Brown on the allotment of Madison H. Brown, deceased, to W. E. Privett. Order Approving Deed. County Court State of Oklahoma, County of Tulsa. Filed Nov 3 1911 G. W. Davis, Clerk.

In the Matter of the Estate of Madison H. Brown, Deceased. —Probate 1094.

Davidson & Williams, attorneys for petitioner.

Examination of Cilla Brown by Mr. Williams.

Cilla Brown being first duly sworn testifies as follows:

Q. What is your name? A. Cilla Brown.
Q. What was your husband's name? A. M. H. Brown.
Q. Was he called Madison Brown? A. Yes, sir.
Q. Is he dead or alive? A. He is dead.
Q. When did he die? A. Sept. 20th.
Q. *Ast* September? A. Yes, sir.
Q. You are his wife? A. Yes, sir.
Q. Did he have any children? A. This little boy.
Q. What is his name? A. Samuel H. Brown.
Q. How old is Samuel? A. He will be six years old this April, coming.
Q. Have you any other children? A. I have one girl, she is married.
Q. What is her name? A. Esther M. Brown.
Q. Who did she marry? A. Legus Brown.
Q. Where does she live? A. On the east side of Kellyville.
Q. Did you have any more children? A. They all died.
Q. But when your husband died he left you and these two children, Esther and Sam? A. Yes.
Q. No other children? A. No.
Q. This piece of land Mr. Privet- is buying an interest

in, describe it. A. It is not very good land, it is nearly all alkali, nothing broke up.

Q. You are selling your interest to Mr. Privett for $150.00, is that right? A. Yes, sir.

Q. Is that a fair price for that land? A. Yes, sir.

By the Court:

Q. Have they paid you the money?

By Mr. Williams: Here is the check.

Q. Do you want to take Mr. Privett's check for $150.00?

A. Yes, sir.

Q. You are willing to take it are you? A. Yes, sir.

Q. And you will go to the bank and get the money on it will you? A. Yes, sir.

Q. And you want the Court to approve the deed?

A. Yes, sir.

Check paid to Cilla Brown in open Court.

(Endorsed) P. R. VI—563 Prob. 1094 E. Estate of Madison H. Brown, deceased. Trans. of Evidence. County Court. State of Oklahoma, County of Tulsa. Filed Nov. 3, 1911. G. W. Davis, Clerk.

Defts. Ex. No. 2—CTD 5-15-18

AFFIDAVIT.

We, Cilla Brown, Esther M. Brown, of lawful age, being first duly sworn upon our oaths, depose and say that we are personally acquainted with Samuel Brown and we know that he is the son of Madison H. Brown and Cilla Brown and we know that the said Samuel Brown was borned on the 23rd. day of Feb. A. D. 1906, and which at this date is *is* over the age of 5 years.

The said Samuel Brown was borned on allotment of Samuel Brown, Sr., son of Cilla Brown and Madison H. Brown, who died long ago, more particularly described as the *a* portion of land where W. L. Childers now resided.

This affidavit effects the NE4 of SE4 of Sec. 4, Township 16 N. Range 13 East Tulsa Co. Okla.

Signed at Bixby, Okla., on this the 24th day of Oct., 1911.

(Signed) Cilla Brown

(Signed) Esther M. Brown

The affiants, Cilla Brown, Esther M. Brown [Clerk's Note: Here appears "and Legus Brown," crossed out] declare they are the petitioner in the above and foregoing instrument and

they declare they have read the same and have had the same read to them and they fully understand the contents thereof.

(Signed) Cilla Brown

(Signed) Esther M. Brown

State of Okla., Tulsa Co.—ss.

Before me, Henry Hornecker, a Notary Public, in and for said County and State, on this 24th day of Oct., 1911, personally appeared Cilla Brown, Esther M. Brown [Clerk's note: Here appears "and Legus Brown," crossed out], to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth. Witness my hand and official seal at Bixby, Okla., this 24th day of Oct., 1911.

(Seal) (Signed) Henry Hornecker,
My Com. Ex. July 28th, 1918. Notary Public.

(Endorsed:) 35260 Direct Indirect Compared Indexed Affidavit R. P. State of Oklahoma Tulsa County. Tulsa, Okla. I hereby certify that this instrument was filed for record in my office on Oct 25, 1911 at 8 o'clock A. M. and is duly recorded in record 115 page 169 (Signed) H. C. Walker, Register of Deeds By ....., Deputy. 75c W. E. Privett, Bixby, OK 4-16-13

"The foregoing certified copy of the record of the probate proceedings in the matter of the guardianship of Samuel H. Brown, a minor, showing the record of the proceedings in the County Court of Tulsa County, Oklahoma, pertaining to the appointment of Cilla Brown, as guardian of Samuel H. Brown, a minor, and the sale of said minor's interest in and to the Northeast Quarter of the Southeast Quarter of Section 4, Township 16 North, Range 13 in Tulsa County, Oklahoma, was set out in full by the Court Reporter in appellants' condensed statement of the evidence, but pursuant to stipulation of counsel that it be not printed in the record, has been omitted therefrom."

Defts. Ex. No. 4—CTD 5-16-18

State of Oklahoma, Tulsa County—ss.

AFFIDAVIT.

Be It Remembered, that before me the undersigned, a Notary Public within and for said County and State, duly

commissioned and acting, on this the 9th day of January, 1913, personally appeared Cilla Brown, of lawful age, who, after being first by me duly sworn, deposes and says:

That affiant speaks, reads, writes and understands the English language, and that this affiant is duly enrolled as a citizen of the Creek Nation of Indians opposite Roll Number 4089; that affiant was the lawful wife of Madison H. Brown, deceased, who was enrolled opposite Roll Number 4088, as a citizen of the Creek Nation; that affiant was living with said Madison H. Brown as his lawful wife at the time of his death, which occurred on or about the 27th day of September, 1911, in and while the said Madison H. Brown was a resident of Tulsa County, Oklahoma.

Affiant further states that of said union between said affiant and said Madison H. Brown, deceased, there was born four children, to-wit: Esther M. Brown, Sammie Brown, Nettie Brown and Samuel H. Brown; that of said children the said Esther M. Brown and the said Samuel H. Brown are now living, but that the said Sammie Brown and the said Nettie Brown are deceased; that the said Sammie Brown died while a minor, and without ever having been married, on or about the 18th day of August, 1889; that the said Nettie Brown died while a minor, and without having ever been married, and without any issue, on or about the 4th day of August, 1910.

Affiant further states that all of her said children received allotments from the Creek Nation, except the said Samuel H. Brown, and that the said Samuel H. Brown was born on the 23rd day of February, 1906. And further affiant saith not.

(Signed) Cilla Brown

Subscribed and sworn to before me, this 9th day of January, 1913. (Signed) R. M. Heffner, Notary Public. My commission expires Oct. 8, 1913. (Seal)

Defts. Ex. No. 4.—CTD 5-16-18

State of Oklahoma, Tulsa County—ss. In the Superior Court. C. R. Privett, Plaintiff, vs. Cilla Brown, et al., Defendants.—No. 930.

Mrs. Cilla Brown being produced and sworn as a witness in behalf of the plaintiff, takes the stand and testifies as follows, to-wit:

Direct Examination by Mr. Brown.

Q. You may state your name. A. Cilla Brown.

Q. Where do you live? A. I live about eight miles south of Bristow.

Q. Are you a Creek Indian? A. Yes, sir.

Q. What blood? A. Full blood.

Q. Do you understand English? Do you? A. Yes, sir.

Q. You read English? A. Yes, sir.

Q. Write? A. Yes, sir.

Q. Who was Madison H. Brown? A. He was my husband.

Q. Is he living or dead? A. Dead.

Q. When did he die? A. He died September 27, 1911.

Q. Where was he living when he died? A. In Tulsa County.

Q. Now, he left you—what children were born to you and Madison H. Brown? How many children?

A. Ester Brown and Sammy Brown, Nettie Brown and Samuel H. Brown.

Q. Four children? A. Yes, sir.

Q. Is Esther living? A. Yes, sir.

Q. Is she married now? A. Yes. She is married.

Q. Is Sammy living? A. He is dead.

Q. Is Nettie living? A. Dead.

Q. She is dead. And is Samuel H. living or dead? A. He is here.

Q. That is the boy here? A. Yes, sir.

Q. When did Sammy die? A. August 18, 1889.

The Court: When?

A. August, 1889.

Q. How old was Sammy when he died? A. Between 4 and 5.

Q. When did Nettie die*d*, Nettie Brown? A. She died August 4, 1910.

Q. How old was she when she died? A. She was between 11 and going on 12.

The Court: Did she have any children?

A. No, sir.

Q. She never left any children? A. No, sir.

Q. When was Samuel H. Brown born?

A. February 23, 1906.

Q. Now, Cilla, do you know the description of the 40 acres? Do you know where it i*t*? A. It is in section 4, I think.

Q. It is described in this petition? A. Yes, sir.

The Court: What county is it in, Creek County?

A. Tulsa County.

The Court: Down near Bixby?

A. Yes, sir.

Q. Have you sold *you* interest in this land? A. Yes, sir.

Q. Do you know whether Ester has sold hers? A. Yes, sir.

Q. Are you the guardian of Samuel H.? A. Yes, sir.

Q. Have you sold Samuel H.'s interest, as guardian?

A. *No* yet, but I want to sell it.

Q. You have sold it, but you have not been paid for it?

A. No, sir.

The Court: That has gone through the County Court?

Mr. James: Gone through the County Court. Yes, sir.

The Court: You represent the——

Mr. James: Guardian ad litem for the boy. The record shows that she was appointed guardian, the land was sold, sale approved by Gubser, and everything. There is a small balance, pending the establishment of the heirship.

The Court: Were the proceedings regular down there?

Mr. James: Yes, sir. I think so.

Mr. Brown: You may ask this witness.

Mr. James: I don't think I care to ask her anything.

The Court: This suit is to establish this boy's rights?

Mr. Brown: The guardian has sold——

The Court: She is the guardian?

Mr. Brown: Ester has sold. Establishing the heirship of Ester and Cilla in this land, and brought to establish the date of the birth of this boy.

The Court: That is all the children you have by the former husband?

A. Yes, sir.

The Court: Those are the only children that were ever born to the family?

A. Yes, sir.

The Court: Do you know whether he was ever married to anybody else or not?

A. No, sir.

The Court: He was not?

A. No, sir.

The Court: He had no other children at all?

A. No, sir.

The Court: You are single?

Mr. Brown: She has married now, since this suit was brought.

Q. When was it you married your last husband? A. December.

Q. December, 1912?

The Court: Can she act as guardian, since she has remarried?

Mr. Brown: I think so. As a matter of fact this sale was had before her marriage; proceedings in the County Court. There was a guardian ad litem appointed. She is a party as guardian, and the minor was sued also, and a guardian ad litem appointed.

The Court: You are acting as guardian ad litem, and for the minor too?

Mr. James: I acted as guardian ad litem for the minor.

The Court: You were not married until after the probate proceedings had been taken in the County Court, or before?

A. Before.

Q. When were you married? What year were you married?

Mr. Brown: The last time.

A. I got married December 2nd.

Q. What year? A. 1912.

Mr. Brown: This probate sale, the guardian's deed was dated February, 1912, 15th of February, 1912, and her first husband died in 1911.

Mr. Brown: That is all.

Mr. James: That is all.

The Court: Stand aside.

Witness excused.

State of Oklahoma, County of Tulsa—ss.

I, George E. Reeves, Official Reporter of the Superior Court within and for the County of Tulsa, State of Oklahoma, Do Hereby Certify that the above and foregoing is a full, true

and correct and complete copy and transcript of all the evidence of the witness Cilla Brown offered or introduced on the trial of the above entitled cause.

(Signed) Geo. E. Reeves,
Official Reporter.

Defts. Ex. No. 6.—CTD 5-16-18

State of Oklahoma, Tulsa County—ss. In the Superior Court. C. R. Privett, Plaintiff, vs. Esther M. Brown, Cilla Brown, Samuel H. Brown, a minor, and Cilla Brown, guardian for said Samuel H. Brown, a minor.—No. .....

PETITION.

The plaintiff, C. R. Privett, for cause of action against the defendants above named, alleges and states: That the said plaintiff is the owner in fee simple, and is in the open, notorious and peaceable possession of the following described real estate situate in the County of Tulsa, State of Oklahoma, to-wit:

The Northeast quarter of the Southeast quarter of Section Four (4), Township Sixteen (16) North, Range Thirteen (13) East of the Indian Base and Meridian.

Plaintiff states that the said defendants Esther M. Brown, Cilla Brown, Samuel H. Brown, a minor, and Cilla Brown as guardian for said Samuel H. Brown, a minor, and each of them claim some right, title, interest, estate or equity in and to the lands as above described, adverse to the interest of said plaintiff, whereas in truth and in fact the said defendants, nor any of them, have any right, title, interest, estate or equity in or to said lands or any part thereof, nor any lien thereon. The plaintiff is not informed and does not know the exact nature, character and extent of the claim of said defendants above named, and cannot set out the same.

Wherefore, plaintiff prays that the said defendants, and each of them, be required to set up all their right, title, interest, estate, equity and claim in and to said lands, and that the same be by the Court declared null and void, and that said plaintiff be adjudged to be the owner in fee simple of said lands, and that his title in and to same be quieted and declared perfect, and that said defendants, and each of them, be perpetually and forever barred an enjoined from setting up or asserting any claim, title, interest or estate in and to said lands, or any part thereof, adverse to this plaintiff, and that

said plaintiff have such other and further relief as the Court may deem equitable and proper, and for the costs of this action.

(Signed) Geo. T. Brown,
Attorney for Plaintiff.

(Endorsement): No. 930. In the Superior Court of Tulsa County, Oklahoma. C. R. Privett, Plaintiff, vs. Esther M. M. Brown, et al., Defendants. Petition. Superior Court, State of Oklahoma, County of Tulsa. Filed Jan. 7-1913, M. E. Cline, Clerk Superior Court. Geo. T. Brown Attorney for Plaintiff.

PRAECIPE FOR SUMMONS.

In the Superior Court of Tulsa County, State of Oklahoma. C. R. Privett, Plaintiff, vs. Esther M. Brown, et al., Defendants.—No. 930.

To the Clerk of Said Court:

Issue Summons in the above entitled cause, and direct the same to the Sheriff of Tulsa County, State of Oklahoma, or to the defendants, Cilla Brown, Samuel H. Brown, Cilla Brown as guardian of Samuel H. Brown, a minor.

Action brought to quiet title to NE4 of SE4 4-16-13 Tulsa County.

Make summons returnable 11th day of January, A. D. 1913.

Defendants required to answer on or before the 31 day of January, 1913.

Dated this 7th day of January, A. D. 1913.

Endorsement: No. 930. Superior Court, Tulsa County, Oklahoma. Praecipe for Summons. C. R. Privett, Plaintiff, vs. Esther M. Brown, et al., Defendants. Geo. T. Brown, Attorney. Filed Jan. 7, 1913. Answer due Jan. 31, 1913. Superior Court, State of Oklahoma, County of Tulsa. Filed Jan. 7-1913, M. E. Cline, Clerk Superior Court.

State of Oklahoma, Tulsa County—ss. In the Superior Court. C. R. Privett, Plaintiff, vs. Esther M. Brown, Defendant. —No. 930.

The State of Oklahoma, to the Sheriff of Tulsa County, Greetings:

You Are Hereby Commanded to notify Cilla Brown Samuel H. Brown Cilla Brown is guardian of Samuel H. Brown a minor that they have been sued by C. R. Privett in the

District Court of Tulsa County, Oklahoma, and that defendants must answer the petition of said C. R. Privett filed against them in said Court, in the City of Tulsa, in said County, on or before the 31st day of Jan., 1913, or said petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 11th day of Jan., A. D. 1913.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Tulsa in said County, this 7th day of Jan., A. D. 1913.

M. E. Cline, Clerk.

(Seal) By Hattie M. Purdy, Deputy.

SHERIFF'S RETURN.

State of Oklahoma, Tulsa County—ss.

Received this Writ Jan. 7th, 1913, at .... o'clock .... M., and served the same upon the following persons, defendants, within named, at the times following, to-wit:

Cilla Brown and Samuel H. Brown, a minor by serving Cilla Brown as Guardian of Samuel H. Brown, and also serving Samuel H. Brown by handing him a copy in presence of Guardian Jan. 9th, 1913, and Cilla Brown Jan. 9th, 1913.

by delivering to said and said defendants, personally, in said County, a true and certified copy of the within summons, with all the endorsements thereon. And upon ..... by leaving for each of said defendants at ..... usual place of residence of each in said County with a member of the family over fifteen years of age, a true and certified copy of the within summons, with all the endorsements thereon.

The following persons, defendants, within named not found in said County: .....

Sheriff's Fees: Service and return, first person, 50c; Serving 2 additional persons, 50c; 3 copies summons, 75c; Mileage .... miles ....; Not found .....; Total, $1.75.

W. M. McCullough, Sheriff.

By Frank F. Bowlin, Under Deputy.

Endorsed: Suit brought for to quiet title to NE4 of SE4 4-16-13 Tulsa County, Okla. M. E. Cline, District Court, By Hattie M. Purdy, Deputy. No. 930. Docket 2 Page 930. In Superior Court. Summons C. R. Privett vs. E. M. Brown et al. Issued 7th Jan 1913 Returnable 11th Jan 1913 Ans Due 31st Jan 1913 Geo. T. Brown, Attorney for Plaintiff. I hereby certify the within to be a true copy of the Original Summons, with all the endorsements thereon. ...., Sheriff, by ..... Deputy. Superior Court,

State of Oklahoma, County of Tulsa, Filed Jan. 10, 1913, M. E. Cline, Clerk Superior Court.

State of Oklahoma, Tulsa County—ss. In the Superior Court. C. R. Privett, Plaintiff, vs. Esther M. Brown, Cilla Brown, Samuel H. Brown, a minor, and Cilla Brown, guardian for said Samuel H. Brown, a minor, Defendants.—No. 930.

APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM.

The plaintiff, C. R. Privett, respectfully shows to the Court that the above entitled action has been commenced, and is now pending in this Court, for the purpose of quieting the title to the lands in said petition described, and that the summons therein has been served upon the defendant Samuel H. Brown, a minor, by serving Cilla Brown, guardian of the said defendant Samuel H. Brown, and by serving said Samuel H. Brown as appears by the summons and the return thereof now on file in this Court; that said defendant Samuel H. Brown is a minor of the age of seven years, and that this plaintiff requests that the Court appoint some suitable person as guardian ad litem in this action to defend on behalf of said infant defendant.

(Signed) Geo. T. Brown,
Attorney for Plaintiff.

Endorsement: No. 930. In the Superior Court of Tulsa County, Oklahoma. C. R. Privett, Plaintiff, vs. Esther M. Brown, et al., Defendants. Application for Appointment of Guardian ad litem. Superior Court, State of Oklahoma, County of Tulsa, Filed Jan. 29, 1913, M. E. Cline, Clerk Superior Court. Geo. T. Brown, Attorney for Plaintiff.

State of Oklahoma, Tulsa County—ss. In the Superior Court. C. R. Privett, Plaintiff, vs. Esther M. Brown, Cilla Brown, Samuel H. Brown, a minor, and Cilla Brown, guardian for said Samuel H. Brown, a minor, Defendants.

ORDER.

Now on this 29th day of January, 1913 the same being one of the regular judicial days of the ..... term of said Court, this matter coming on for hearing upon the application for the appointment of a guardian ad litem on behalf of defendant Samuel H. Brown, a minor, and the Court upon reading said application, and it appearing to the Court that one Luther James is a competent and responsible person and

an attorney of this Court, and disinterested in this action, and that the said Luther James has consented to act as such guardian, it is ordered that the said Luther James be and he is hereby appointed guardian ad litem for the said Samuel H. Brown, a minor, and he is hereby authorized and directed to appear and defend said action on behalf of said minor. (Signed) M. A. Breckinridge, Judge.

Endorsement: No. 930. In the Superior Court of Tulsa County, Oklahoma. C. R. Privett, Plaintiff, vs. Esther M. Brown, et al., Defendants. Order Superior Court, State of Oklahoma, County of Tulsa. Filed Jan 29 1913, M. E. Cline, Clerk Superior Court, Geo. T. Brown, Attorney for Plaintiff.

State of Oklahoma, Tulsa County. In the Superior Court. C. R. Privett, Plaintiff, vs. Esther M. Brown, et al., Defendants.—No. 930.

ANSWER OF GUARDIAN AD LITEM.

Comes Luther James the guardian ad litem appointed herein by the court to defend for the infant defendant Samuel H. Brown, and for answer to the plaintiff's petition denies each and every allegation in said petition contained.

Wherefore having fully answered he prays the judgment of the court, that said infant's rights may be protected in the premises.

(Signed) Luther James, Guardian Ad Litem.

Endorsement: No. 930. C. R. Privett vs. Esther M. Brown, et al. Answer of Guardian Ad Litem. Superior Court, State of Oklahoma, County of Tulsa. Filed Feb. 3-1913 M. E. Cline, Clerk Superior Court.

State of Oklahoma, Tulsa County—ss. In the Superior Court. C. R. Privett, Plaintiff, vs. Esther M. Brown, Samuel H. Brown, a minor, Cilla Brown and Cilla Brown, guardian for said Samuel H. Brown, a minor, Defendants.—No. 930.

DISCLAIMER OF DEFENDANT CILLA BROWN.

Comes now Cilla Brown, one of the defendants above named, and disclaims any and all right, title, estate or interest in and to the lands described in petition of plaintiff, or any part thereof.

Wherefore, this defendant asks that she may go hence, and for her costs.

(Signed) Cilla Brown, Defendant.

Witness: ....., ...

Endorsement: No. 930. In the Superior Court of Tulsa County, Oklahoma. C. R. Privett, Plaintiff, vs. Esther M. Brown, et al., Defendants. Disclaimer of Defendant, Cilla Brown, Superior Court, State of Oklahoma, County of Tulsa. Filed Jan. 29, 1913, M. E. Cline, Clerk Superior Court.

State of Oklahoma, Tulsa County—ss. In the Superior Court. C. R. Privett, Plaintiff, vs. Esther M. Brown, Samuel H. Brown, a minor, Cilla Brown, and Cilla Brown, guardian for said Samuel H. Brown, a minor, Defendants.—No. 930.

DISCLAIMER OF DEFENDANT ESTHER M. BROWN.

Comes now Esther M. Brown, one of the defendants above named, and disclaims any and all right, title, estate or interest in and to the lands described in petition of plaintiff, or any part thereof, being the NE of SE of Sec. 4-16-13.

Wherefore, this defendant asks that she may go hence, and for her costs.

(Signed) Esther M. Brown.

Witness: Legus Brown.

Endorsement: No. 930. In the Superior Court of Tulsa County, Oklahoma. C. R. Privett, Plaintiff, vs. Esther M. Brown, et al., Defendants. Disclaimer of Defendant Esther M. Brown. Superior Court, State of Oklahoma, County of Tulsa. Filed Jan 29 1913, M. E. Cline, Clerk Superior Court.

State of Oklahoma, Tulsa County—ss. In the Superior Court. C. R. Privett, Plaintiff, vs. Esther M. Brown, Cilla Brown, Samuel H. Brown, a minor, Defendants.—No. 930.

JOURNAL ENTRY.

Now on this the 3rd day of February, 1913, same being one of the regular Judicial days of the January 1913 term of said Court, this matter came on for hearing in its regular order, and the plaintiff appearing in person and by attorney, and the defendant Samuel H. Brown, a minor, appearing in person and by his guardian ad litem, Luther James, an attorney of the Tulsa County bar, heretofore appointed by order of this Court to conduct the defense in behalf of said minor, and the defendants Esther M. Brown and Cilla Brown having filed herein their disclaimers, and it appearing to the Court that said defendant Samuel H. Brown, a minor, having been duly and legally summoned in this cause, as provided by law, and the court after hearing the evidence, both oral and

documentary, and after examining the pleadings in said cause and after hearing the argument of counsel and being fully advised in the premises, finds:

That the statements and allegations in said petition contained are true; that the plaintiff is in possession of and is the owner in fee simple of the lands described in said petition.

The Court further finds that said lands were allotted by the Creek Nation and the Department of the Interior as the homestead to Madison H. Brown, who was duly enrolled opposite roll number 4088, as a full-blood citizen of the Creek Tribe or Nation of Indians; that the said Madison H. Brown died intestate and while a resident of what is now Tulsa County, Oklahoma, on or about the 27th day of September, 1911; that the said Madison H. Brown, deceased, was the legal husband of Cilla Brown, defendant herein, and that of said union there was born four children, to-wit: Esther M. Brown and Samuel H. Brown, defendants herein, and also Sammie Brown and Nettie Brown; that of said children, the said Esther M. Brown and the said Samuel H. Brown are now living; that the said Sammie Brown died intestate and without issue, never having been married, on or about the 18th day of August, 1889; that the said Nettie Brown died intestate, without issue and never having been married, on or about the 4th day of August, 1910.

The Court further finds that the said Samuel H. Brown, minor defendant herein, was born on the 23rd day of February, 1906, and the said lands described in said petition, were by virtue of the provisions of the Act of Congress of May 27, 1908, alienable by the heirs of said decedent, Madison H. Brown.

The Court further finds that said Cilla Brown and said Esther M. Brown, and the said Cilla Brown as guardian of said Samuel H. Brown, a minor, have sold their interest in said land, and that the said plaintiff has, by subsequent conveyances, acquired said interest.

It is therefore by the Court considered, ordered, adjudged and decreed that the said plaintiff C. R. Privett is the owner in fee of the said:

> Northeast quarter of the Southeast quarter of Section Four (4), Township Sixteen (16) North, Range Thirteen (13) East of the Indian Base and Meridian, situate in Tulsa County, Oklahoma,

and that the said defendants Cilla Brown, Esther M. Brown and Samuel H. Brown, a minor, and each of them, and all persons claiming by, through or under them, or either of them,

since the commencement of this action, be and they are hereby perpetually and forever barred and enjoined from setting up or claiming any right, title, interest, estate or equity in and to said lands or any part thereof, adverse to this plaintiff and those claiming under him, and from disturbing plaintiff in his peaceable and quiet enjoyment of said above described premises.

(Signed) M. A. Breckinridge, Judge.

O. K. James.

Endorsement: No. 930. In the Superior Court of Tulsa County, Oklahoma. C. R. Privett, Plaintiff, vs. Esther M. Brown, et al., Defendants. Journal Entry Superior Court, State of Oklahoma, County of Tulsa. Filed Feb 5 1913 M. E. Cline, Clerk Superior Court. Geo. T. Brown, Attorney for Plaintiff.

State of Oklahoma, Tulsa County—ss.

I, the undersigned, Frank Ingraham, Court Clerk in and for Tulsa County, State of Oklahoma, do hereby certify that the within and foregoing is a full, true and correct transcript of the record in Case No. 930, entitled C. R. Privett, Plaintiff, vs. Esther M. Brown, Cilla Brown, Samuel H. Brown, a minor, and Cilla Brown guardian for said Samuel H. Brown, in the Superior Court of Tulsa County, Oklahoma, including petition, praecipe for summons, summons and return, application for appointment of guardian ad litem, order appointing guardian ad litem, answer of Cilla Brown, answer of Esther Brown, answer of Guardian ad litem, and the journal entry containing the judgment of the court, together with all the endorsements thereon, as the same appear of record and on file in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court of Tulsa County, Oklahoma, on this the 4 day of April, 1916.

(Seal) (Signed) Frank Ingraham.

State of Oklahoma, Tulsa County—ss.

I, M. A. Breckenridge, do hereby certify that I am the duly elected, qualified and acting Judge of the Superior Court of Tulsa County, State of Oklahoma, and am the presiding justice of said court; that Frank Ingraham who has executed the within and foregoing certificate, is the duly elected, qualified and acting Court Clerk in and for Tulsa County, State of Oklahoma, and is Clerk of the Superior Court in and for said county and state, and that his said certificate and attes-

tation is in due form. I further certify that I have no official seal.

Witness my hand this .... day of ....., 1917.

.....,
Judge of the Superior Court in and for Tulsa County, Oklahoma.

State of Oklahoma, Tulsa County—ss.

I, Frank Ingraham, do hereby certify that I am the duly elected, qualified and acting Court Clerk of Tulsa County, Oklahoma, and as the Clerk of the Superior Court of Tulsa County, State of Oklahoma. That the M. A. Breckenridge who executed the within and foregoing certificate is the presiding justice of that court and is duly commissioned and qualified.

Witness my hand and the seal of my office at Tulsa, in Tulsa County, Oklahoma, this .... day of ....., 1917.

.....,
Court Clerk in and for
Tulsa County, Oklahoma.

Come now the appellants and by their solicitors state that the following [foregoing] constitutes in simple and condensed form all the evidence admitted and that offered and rejected, and all the proceedings at the final hearing of this action, in the District Court of the United States for the Eastern District of Oklahoma, the testimony of the witnesses being stated in the most part in the narrative form, all of which appellants desire shall be included in the record on appeal, and where, in said statement, appellants have stated testimony in the exact words of the witnesses, the appellants desire that all such quoted testimony be so reproduced and prays the court so to direct.

Wherefore, appellants pray that said statement be approved.

Geo. T. Brown,
Preston C. West,
Solicitors for Appellants.

In the District Court of the United States for the Eastern District of Oklahoma. C. R. Privett, John O. Mitchell and J. E. Crosbie, Appellants, v. United States of America, H. R. Wilcox and Oil Production Company, Appellees. —No. ..... Equity.

ORDER APPROVING STATEMENT OF EVIDENCE.

Now on this the 26th day of August, A. D. 1918, came on to be considered the statement of plaintiff of the evidence to be included in the record on appeal to the United States Circuit Court of Appeals for the Eighth Circuit in said cause.

And the Court having examined the same finds it to be a true and correct statement of the evidence taken and introduced upon the trial of said cause, with the exception of certain exhibits omitted therefrom by agreement of counsel. It is, therefore, by the Court ordered, adjudged and decreed that the above and foregoing statement of the evidence constitutes the entire evidence taken and introduced in said cause, except as to certain exhibits not essential for the consideration of the errors assigned and omitted from the transcript by agreement of counsel, and the same is hereby approved and made a part of the record in said case for the purpose of the appeal.

RALPH E. CAMPBELL, *Judge.*

O.K. J. C. WILMOTT, *Sp'l Ass't U. S. Atty.*

Endorsed: Filed Aug. 26, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 14th day of August, A. D. 1918, the defendants C. R. Privett, John O. Mitchell and J. E. Crosbie filed their Petition for Allowance of Appeal, together with their Assignment of Errors, which Appeal was allowed by the Court. Said Petition for Allowance of Appeal, Assignment of Errors, and Order Allowing Appeal are in words and figures as follows:

Petition for Appeal.

To the Honorable Ralph E. Campbell, Judge of Said Court:

Now come C. R. Privett, John O. Mitchell and J. E. Crosbie, defendants in the above cause, by their attorneys, George T. Brown and Preston C. West, and feeling themselves aggrieved by the final decree of this court entered on the .... day of August, A. D. 1918, hereby pray that an appeal may be allowed to them from said decree to the United States Circuit Court of Appeals for the Eighth Circuit, and in connection with this petition, the petitioners herewith present their assignment of errors.

Petitioners further pray for an order of supersedeas herein, pending the final disposition of the cause, and that the amount of security may be fixed by the order allowing this appeal.

GEO. T. BROWN,

PRESTON C. WEST,

Attorneys for defendants, C. R. Privett, John O. Mitchell and J. E. Crosbie.

Endorsed: Filed Aug. 14, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Assignment of Errors.

Now come the appellants, C. R. Privett, John O. Mitchell and J. E. Crosbie, by their attorneys, George T. Brown and Preston C. West, and in connection with their petition for appeal, say that in the record and proceedings, and in the final decree aforesaid, manifest error has intervened, to the prejudice of the appellants, to-wit:

First: The District Court of the United States for the Eastern District of Oklahoma erred in sustaining the motion of plaintiff to strike out the supplemental answer of defendants, J. E. Crosbie and John O. Mitchell, setting up the former adjudication of the matters contained in the bill herein by the consideration, judgment and decree of the Superior Court of Tulsa County, Oklahoma, and in striking out said supplemental answer.

Second: The District Court of the United States for the Eastern District of Oklahoma erred in refusing to admit in evidence the record of the proceedings of the Superior Court of Tulsa County, Oklahoma, in cause No. 930 in said court, to quiet title to the land in controversy herein, in which case C. R. Privett was plaintiff, and Esther M. Brown, Cilla Brown and Samuel H. Brown were defendants; which record showed a former binding adjudication of the matters and things set forth in the bill of complaint herein.

Third: The District Court of the United States for the Eastern District of Oklahoma erred in refusing to find and and hold that there has heretofore been a binding adjudication of the matters and things set forth in the bill of complaint herein; its refusal to so find and hold being contrary to the law and the evidence.

Fourth: The District Court of the United States for the Eastern District of Oklahoma erred in finding and holding that Samuel H. Brown was born after the 4th of March, A. D. 1906.

Fifth: The District Court of the United States for the Eastern District of Oklahoma erred in refusing to find and hold that Samuel H. Brown was born prior to March 4, 1906.

Sixth: The District Court of the United States for the Eastern District of Oklahoma erred in rendering judgment against the defendants and in favor of the plaintiff.

Seventh: The District Court of the United States for the Eastern District of Oklahoma erred in ordering and decreeing a cancellation of the several deeds, instruments and conveyances which are, in and by its said decree and order, ordered cancelled.

Wherefore, appellants pray that the decree of the District Court of the United States for the Eastern District of Oklahoma may be reversed, and the cause remanded with direction to enter a decree for the defendants, dismissing the complainants' bill.

GEO. T. BROWN,
PRESTON C. WEST,
Attorneys for Petitioners and Appellants.

Endorsed: Filed Aug. 14, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Order Allowing Appeal.

On motion of Preston C. West, Esquire, solicitor and counsel for defendants above named, C. R. Privett, John O. Mitchell and J. E. Crosbie, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the decree heretofore filed and entered herein, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Eighth Circuit.

And it is further ordered that the bond on appeal be fixed at the sum of one thousand dollars, and that the same act as supersedeas bond and also as a bond for costs and damages on appeal.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Aug. 14, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Citation.

United States of America,

To United States of America, H. R. Wilcox and Oil Production Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to (1) Appeal filed in the Clerk's Office of the (2) United States District Court for Eastern District of Okla. wherein C. R. Privett, John O. Mitchell and J. E. Crosbie (3) are Appellants and you are (4) Appellees, to show cause, if any there be, why the (5) Decree rendered against the said (6) Appellants as in said (7) Appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable RALPH E. CAMPBELL, Judge of United States District Court for East. Dist. of Okla. this 14th day of August, A. D. 1918.

RALPH E. CAMPBELL,
Judge of United States District Court.

Notes.—(1) Insert (a writ of error) or (an appeal allowed and). (2) Insert name of Court to which writ of error is addressed, or from which appeal is allowed. (3) Insert Plaintiff in Error or Appellant. (4) Insert Defendant in Error or Appellee. (5) Insert Judgment or Decree. (6) Insert Plaintiff in Error or Appellant. (7) Insert Writ of Error or Appeal.

Service of the within citation accepted this 14th day of August, 1918.

J. C. WILHOIT,
Spl. Ass't U. S. Atty.,
For United States of America.

ROBERT R. BURNS,
for H. R. Wilcox.

EDW. H. CHANDLER and
FARRAR L. MCCAIN,
Solicitors for Defendants Oil Production Company.

Praecipe for Record.

To R. P. Harrison, Clerk of the Above Named Court:

You are requested to make a printed transcript of the record in the above entitled cause, to be filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to appeal allowed in said cause; to include in such transcript of record the following and no other papers:

(1) The bill of complaint and the answers of all the defendants, including the supplemental answer of Crosbie and Mitchell which was stricken (exhibits may be omitted).

(2) Plaintiff's motion to strike supplemental answer of Crosbie and Mitchell.

(3) Order sustaining plaintiff's motion to strike supplemental answer of Crosbie and Mitchell, and striking said Supplemental answer.

(4) Appellant's condensed statement of evidence at final hearing.

(5) Final decree of the court for the plaintiff and against the defendants, ordering cancellation of deeds, instruments and conveyances as prayed in the bill.

(6) Petition for allowance of appeal.

(7) Assignment of errors.

(8) Order allowing appeal.

(9) Citation, with service.

(10) Notice and election as to printing record (with service).

(11) Certificate of Clerk to record.

GEO. T. BROWN,
PRESTON C. WEST,
Attorneys for defendants, C. R. Privett, John O. Mitchell and J. E. Crosbie.

We, the undersigned, attorneys for the complainant, United States of America, and for the defendants, H. R. Wilcox and Oil Production Company herein, do hereby acknowledge receipt of the above designation of parts of the records necessary for the consideration of the errors assigned by the defendants, C. R. Privett, John O. Mitchell and J. E. Crosbie, and waive the designation of any other parts of the record, and agree that the above includes all of the portions of said record material or necessary for the consideration of the errors assigned; and we also acknowledge service of notice of the filing in the Clerk's office at the time of the filing of this praecipe, of the record of appellant's condensed state-

ment of evidence and proceedings at the final hearing of this action, and agree that said condensed statement is correct, and that the judge of the United States District Court for the Eastern District of Oklahoma may sign and approve said condensed statement at the time and place fixed in the notice to us, to-wit, in the United States court room in the United States courthouse, in the city of Muskogee, Oklahoma, on the 26th day of August, A. D. 1918.

Dated this 14th day of August, A. D. 1918.

J. C. WILHOIT,
Spl. Ass't U. S. Atty.,
For United States of America.

ROBERT R. BURNS,
for H. R. Wilcox.

EDW. H. CHANDLER &
FARRAR L. McCAIN,
Solicitors for Oil Production Company.

ELECTION AS TO PRINTING RECORD.

The defendants, C. R. Privett, John O. Mitchell and J. E. Crosbie hereby elect to have a transcript of the record in the above cause printed under the supervision of the Clerk of the District Court of the United States for the Eastern District of Oklahoma, and respectfully request that said transcript in said cause be printed as required by law under this election.

GEO. T. BROWN,
PRESTON C. WEST,
Attorneys and Solicitors for above named defendants.

Service of the above election as to printing record is acknowledged this 14th day of August, A. D. 1918.

J. C. WILHOIT,
Spl. Ass't U. S. Atty.,
For United States of America.

ROBERT R. BURNS,
for H. R. Wilcox.

EDW. H. CHANDLER and
FARRAR L. McCAIN,
Solicitors for defendants, and Oil Production Company.

Endorsed: Filed Aug. 14, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

STIPULATION.

It Is Hereby Stipulated and Agreed That

Whereas, there is incorporated in the appellants' condensed statement of the evidence and set out in full the record of the probate proceedings showing the appointment of Cilla Brown as the guardian of Samuel H. Brown, and the proceedings had in said matter, whereby the sale of the minor's interest in the property involved in this suit was undertaken to be disposed of at guardian's sale, the said probate record being Defendant's Exhibit 3, offered in open court, but by the court refused to be admitted in evidence, and which exhibit comprises typewritten sheets 123 to 179 inclusive of said appellants' condensed statement of the evidence and proceedings at the final hearing, and

Whereas, The incorporation of the full text of said probate record in the statement of the evidence was due to inadvertence, and it is not deemed essential to proper understanding of this case that same be incorporated in the transcript of the record to be printed and filed,

It is, therefore, hereby agreed that the Clerk, in making up and printing said transcript, may omit the said Exhibit 3, and that the same be not incorporated in said transcript to be printed and filed, but that in lieu thereof, the Clerk may insert a notation immediately following the offer and exclusion of this exhibit, which is at the top of typewritten sheet 123 of appellants' condensed statement, in substance as follows:

> "The foregoing certified copy of the record of the probate proceedings in the matter of the guardianship of Samuel H. Brown, a minor, showing the record of the proceedings in the County Court of Tulsa County, Oklahoma, pertaining to the appointment of Cilla Brown, as guardian of Samuel H. Brown, a minor, and the sale of said minor's interest in and to the Northeast Quarter of the Southeast Quarter of Section 4, Township 16 North, Range 13 in Tulsa County, Oklahoma, was set out in full by the Court Reporter in appellants' condensed statement of the evidence, but pursuant to stipulation of counsel that it be not printed in the record, has been omitted therefrom."

Witness our hands this 5th day of September, 1918.

PRESTON C. WEST,
For the Appellants.

J. C. WILHOIT,
Sp'l. Asst. U. S. Atty.
For the United States of America.

Endorsed: Filed Sept. 6th, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Clerk's Certificate.

United States of America, Eastern District of Oklahoma—ss.

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of *United States of America* v. *W. E. Privett, et al.*, Equity No. 2169, as was ordered by praecipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I further certify that the citation attached hereto and returned herewith is the original citation issued in this cause.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Muskogee, dated this 9th day of September, 1918.

R. P. Harrison, *Clerk*,

(Seal) By H. E. Boudinot, *Deputy*.

And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Counsel for Appellants.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5269.

C. R. PRIVETT et al., Appellants,

vs.

UNITED STATES OF AMERICA et al.

The Clerk will enter my appearance as counsel for the appellants.

GEO. T. BROWN,
PRESTON C. WEST,
A. A. DAVIDSON,
ROGER S. SHERMAN,
GREY MOORE,
All of Tulsa, Okla.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 20, 1918.

(Appearance of Mr. W. P. McGinnis, U. S. Attorney, and Mr. J. C. Wilhoit, Assistant U. S. Attorney, as Counsel for the Appellee United States of America.)

The Clerk will enter my appearance as counsel for the Appellee United States of America.

W. P. McGINNIS.
J. C. WILHOIT.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 5, 1918.

(Appearance of Mr. Edward H. Chandler and Mr. Farrar L. McCain as Counsel for the Appellee Oil Production Co.)

The Clerk will enter my appearance as Counsel for the Appellee Oil Production Co.

EDW. H. CHANDLER,
FARRAR L. McCAIN,
Counsel for Oil Production Company.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 5, 1918.

(Appearance of Mr. J. P. O'Meara as Counsel for the Appellee Oil Production Co.)

The Clerk will enter my appearance as Counsel for the Appellee Oil Production Co.

J. P. O'MEARA.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 5, 1918.

(Appearance of Mr. Robert R. Burns as Counsel for the Appellee H. R. Wilcox.)

The Clerk will enter my appearance as Counsel for the Appellee H. R. Wilcox.

ROBERT R. BURNS.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 14, 1918.

(Order of Submission.)

May Term, 1919.

Wednesday, June 4, 1919.

This cause having been called for hearing in its regular order, Judge Stone retires and takes no part in the hearing or decision of this cause, and argument was commenced by Mr. Preston C. West for appellants and concluded by Mr. Alvin F. Mahony, Assistant United States Attorney, for the appellee United States.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

(Opinion.)

United States Circuit Court of Appeals, Eighth Circuit, September Term, A. D. 1919.

No. 5269.

C. R. PRIVETT, JOHN O. MITCHELL and J. E. CROSBIE, Appellants,

vs.

UNITED STATES OF AMERICA, H. R. WILCOX and OIL PRODUCTION CO., Appellees.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Mr. Preston C. West (Mr. George T. Brown, Mr. Roger S. Sherman and Mr. A. A. Davidson were with him on the brief), for appellants.

Mr. Alvin F. Molony, Special Assistant to the United States Attorney (Mr. W. P. McGinnis, United States Attorney, and Mr. J. C. Wilhoit, Special Assistant to the United States Attorney, were with him on the brief), for appellees.

Before Sanborn, Circuit Judge, and Munger and Youmans, District Judges.

YOUMANS, *District Judge*, delivered the opinion of the Court:

This is a suit by the United States to cancel certain conveyances of land which was allotted as a homestead to one Madison H. Brown, a half-blood Creek Indian. The allottee died September 29, 1911, leaving a widow, Cilla Brown, an adult daughter, Esther Brown, and a minor son, Samuel H. Brown. The widow and daughter conveyed their respective interests in the homestead to W. E. Privett. The interest of the minor, Samuel H. Brown, was conveyed to W. E. Privett by guardian's deed under proceedings in the County Court of Tulsa County, Oklahoma. W. E. Privett conveyed the land to C. R. Privett. He brought suit to quiet his title to the land in the Superior Court of Tulsa County against Cilla, Esther and Samuel H. Brown. A guardian ad litem was appointed for the minor. Cilla and Esther Brown disclaimed any interest in the land. Upon the issue raised by the bill and answer of the guardian ad litem of Samuel H. Brown, his mother and sister testified that he was born February 23, 1906. If this was true the land inherited by him from his father was unrestricted. The Superior Court of Tulsa County found that he was born on that date and that the guardian's deed conveyed a good title. A decree was entered quieting the title of C. R. Privett who afterwards conveyed to John O. Mitchell and J. E. Crosbie. Oil was afterwards found on the land.

The United States then brought this suit based on Section 9 of the Act of Congress of May 27, 1908 (35 Stat. 315).

It was alleged in the bill that Samuel H. Brown was born subsequent to March 4, 1906, that is, on April 23, 1906, "and that by reason of the death of the said Madison H. Brown and the birth of Samuel H. Brown since March 4, 1906, being a three quarter-blood Indian, the homestead of Madison H. Brown became the property of and is now the property of the said Samuel H. Brown to the extent that the same shall remain for the use and support of said Samuel H. Brown during his life until April 26, 1931."

Mitchell and Crosbie filed an answer setting up the decree of the Superior Court of Tulsa County as res adjudicta of the question of the date of birth of Samuel H. Brown. On motion of the United States this answer was stricken out. On the trial appellants offered to introduce in evidence the record in that case. Upon objection of the United States the offer was refused.

The testimony of a number of witnesses was introduced by the United States who testified that Samuel H. Brown was born April 23, 1906, and the court below upon that testimony found that to be the true date of his birth.

The question here is whether the decision of the Superior Court of Tulsa County in a suit in which the United States was not a party is res adjudicta in this court.

"It is well settled that, in order to render a matter res adjudicata there must be a concurrence of the four conditions, viz.: (1) Identity in the thing sued for; (2) Identity of the cause of action; (3) Identity of persons and parties to the action; and (4) Identity of the quality in the persons for or against whom the claim is made." Lyon v. Perrin and Gaff Manufacturing Co., 125 U. S. 698, 700; Turner Tp. v. Williams, 97 N. W. 842, 843; State v. Kaemmerling, 111 Pac. 443; Virginia-Carolina Chemical Co. v. Fisher, 50 Southern, 504, 507; Vincent v. Mutual Reserve Fund Ass'n, 58 Atl. 983, 1904.

"The essence of estoppel by judgment is that same right, question, or fact in dispute between parties has been judicially determined by a court of competent jurisdiction; and, where such judgment is pleaded in bar of a subsequent action, the question always is, Has such question been so determined between the same parties or their privies? and not upon what evidence was it determined, or the reason therefor." Fitch v. Stanton Tp., 180 Fed. 310, 314.

Therefore the decree of the State Court can not be pleaded in bar of this action.

This case comes within the rule in Bowling v. United States, 233 U. S. 528, and Heckman v. United States, 224 U. S. 413.

It follows that the decree of the lower court should be affirmed and it is so ordered.

Filed October 20, 1919.

(*Decree.*)

United States Circuit Court of Appeals, Eighth Circuit. September Term, 1919.

Monday, October 20, 1919.

No. 5269.

C. R. PRIVETT, JOHN O. MITCHELL and J. E. CROSBIE, Appellants

vs.

UNITED STATES OF AMERICA, H. R. WILCOX and OIL PRODUCERS COMPANY.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and

dered by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed without costs to either party in this Court.

October 20, 1919.

(Petition for Appeal to Supreme Court U. S.)

To the Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Now comes C. R. Privett, John O. Mitchell and J. E. Crosbie, appellants in the above cause, (defendants in the trial court), by their attorneys, George T. Brown and Preston C. West, and feeling themselves aggrieved by the final judgment and opinion of this Court, entered against them and in favor of the appellee, United States of America, (Plaintiff in the trial court), wherein and whereby the final decree of the District Court of the United States for the Eastern District of Oklahoma was affirmed by this Court, hereby pray that an appeal may be allowed to them from the said judgment and opinion of this Court to the Supreme Court of the United States, and in connection with this petition, the petitioners herewith present their assignment of errors.

And in connection with this petition for appeal, your petitioners further state and show that the decree and judgment of the Circuit Court of Appeals for the Eighth Circuit is not made final by the statutes of the United States in such cases made and provided, and that the matter in controversy exceeds one thousand dollars besides costs, as will more fully appear from the affidavit of J. E. Crosbie, one of the appellants, and attached to this petition and made a part hereof.

Petitioners further pray that an order of supersedeas may be entered herein, pending the final disposition of the cause, and that the amount of security may be fixed by the order allowing this appeal.

GEO. T. BROWN,
PRESTON C. WEST,
Attorneys for Appellants.

Affidavit as to Matter of Amount Involved.

* * * * * * *

I, J. E. Crosbie, being first duly sworn, upon oath state that I am one of the appellants in the above styled and numbered cause, that I reside in the City of Tulsa, Tulsa County, State of Oklahoma, that I am of lawful age and that I have personal acquaintance with and knowledge of the property involved in this litigation and the matter involved in controversy herein, and that the matter in controversy exceeds one thousand dollars besides costs, and that the value thereof, exclusive of costs, is not less than the sum of $5,000.00, and that said matter in controversy so exceeded the sum of one thousand dollars besides costs, and amounted to and was of the value of not less than $5,000.00 at the time of the institution of the suit in the

District Court of the United States for the Eastern District of Oklahoma, entitled United States vs. W. E. Privett, et al, to reverse the final judgment and decree in which cause, and the opinion and judgment of the United States Circuit Court of Appeals for the Eighth Circuit affirming the same, this appeal is prosecuted.

J. E. CROSBIE.

Subscribed and sworn to before me this 2nd day of December, 1919.

[SEAL.] GRACE C. COBERLY,
Notary Public.

My Commission expires May 23, 1922.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 5, 1920.

(*Assignment of Errors on Appeal to Supreme Court, U. S.*)

Now come the appellants (defendants in the trial court), C. R. Privett, John O. Mitchell and J. E. Crosbie, by their attorneys, George T. Brown and Preston C. West, and in connection with their petition for appeal, say that in the record and proceedings, and in the final opinion and judgment of this Court, as well as in the final decree of the trial Court, manifest error has intervened, to the prejudice of the appellants, to-wit:

First. The United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the judgment and decree of the District Court of the United States for the Eastern District of Oklahoma.

Second. The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of the United States for the Eastern District of Oklahoma erred in sustaining the motion of appellee, United States of America, (plaintiff in the trial court), to strike out the supplemental answer of appellants (defendants in the trial court), J. E. Crosbie and John O. Mitchell, setting up the former adjudication of the matters contained in the bill herein by the consideration, judgment and decree of the Superior Court of Tulsa County, Oklahoma, and in striking out said supplemental answer, and in not reversing the judgment and decree of the trial court for said error.

Third. The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of the United States for the Eastern District of Oklahoma erred in refusing to admit in evidence the record of the proceedings of the Superior Court of Tulsa County, Oklahoma, in cause No. 930 in said court, to quiet the title to the land in controversy herein, in which case C. R. Privett was plaintiff, and Esther M. Brown, Cilla Brown and Samuel H. Brown were defendants; which record showed a former binding adjudication of the matters and things set forth in the bill of complaint herein, and in not reversing the judgment and decree of the trial court for said error.

Fourth. The United States Circuit Court of Appeals for the Eighth Circuit erred in refusing to hold that there had heretofore been a binding adjudication of the matters and things set forth in the bill of complaint herein; this refusal to so hold being contrary to the law and the evidence, and erred in declining and refusing to reverse the final judgment and decree of the District Court of the United States for the Eastern District of Oklahoma for that said trial court had also erroneously held that there had been no binding adjudication of the matters and things set forth in the bill of complaint.

Fifth. The United States Circuit Court of Appeals for the Eighth Circuit erred in refusing to hold that the District Court of the United States for the Eastern District of Oklahoma erred in finding and holding that Samuel H. Brown was born after the 4th day of March, 1906, and in not reversing the final judgment and decree of the trial court for such error.

Sixth. The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of the United States for the Eastern District of Oklahoma erred in refusing to hold and find that Samuel H. Brown was born prior to March 4, 1906, and in not reversing the final judgment and decree of the trial court for such error.

Seventh. The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of the United States for the Eastern District of Oklahoma erred in ordering, decreeing and adjudging the cancellation of the several deeds, instruments and conveyances which are, in and by the final judgment, decree and order of the said trial court, ordered cancelled, and in not reversing the final judgment and decree of the District Court of the United States for the Eastern District of Oklahoma for said error.

Eighth. The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to reverse the final judgment and decree of the District Court of the United States for the Eastern District of Oklahoma, and declining and refusing to remand this cause to said court with directions to enter a decree for appellants (defendants below), dismissing complainants' bill.

Wherefore, Appellants pray that the said opinion and judgment of the United States Circuit Court of Appeals for the Eighth Circuit may be reversed, and that this cause be ordered remanded to the District Court of the United States for the Eastern District of Oklahoma, with direction to enter a decree for appellants (defendants below) dismissing complainants' bill.

GEO. T. BROWN,
PRESTON C. WEST,
Attorneys for Petitioners.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 5, 1920.

(Supersedeas Bond on Appeal to Supreme Court, U. S.)

Know all Men by these Presents, That We, C. R. Privett, John O. Mitchell and J. E. Crosbie, as principals, and The Aetna Casualty & Surety Company, Hartford, Connecticut, as surety, are held and firmly bound unto the United States of America, H. R. Wilcox and Oil Production Company in the sum of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, to be paid to them and their respective representatives, administrators and successors; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, administrators and successors, by these presents.

Sealed with our seals and dated this 24th day of November, 1919.

Whereas, The above named C. R. Privett, John O. Mitchell and J. E. Crosbie, have prosecuted an appeal to the Supreme Court of the United States to reverse the opinion and judgment of the United States Circuit Court of Appeals for the Eighth Circuit, and the final judgment and decree of the District Court of the United States for the Eastern District of Oklahoma, in the above entitled cause.

Now, Therefore, The condition of this obligation is such that if the above named C. R. Privett, John O. Mitchell and J. E. Crosbie shall prosecute their said appeal to effect and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void; otherwise to remain in full force and effect.

[Seal of Aetna Casualty & Surety Co.]

JOHN O. MITCHELL,
J. E. CROSBIE,
C. R. PRIVETT,
(P. C. W.),
Principals.
THE AETNA CASUALTY & SURETY COMPANY,
Surety.

By J. A. PORTER,
Attorney-in-Fact.
By J. S. PEARCE,
Attorney-in-Fact.

Sealed and delivered in the presence of:

____ ____.
____ ____.

Approved:
WALTER H. SANBORN,
Senior Circuit Judge in and for the Eighth Circuit.

(Power of Attorney of The Aetna Casualty and Surety Company to J. S. Pearce, of Tulsa, Oklahoma.)

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 5, 1920.

(Order Allowing Appeal to Supreme Court, U. S.)

On motion of Preston C. West, Esq., solicitor and counsel for appellants above named, (defendants in the trial court) C. R. Privett, John O. Mitchell and J. E. Crosbie,

It is hereby ordered that an appeal to the Supreme Court of the United States from the opinion and judgment of the United States Circuit Court of Appeals for the Eighth Circuit rendered herein, affirming the final judgment and decree of the District Court of the United States for the Eastern District of Oklahoma herein, be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said The Supreme Court of the United States.

And it is further ordered That the bond on appeal be, and the same is hereby, fixed at the sum of One Thousand ($1,000.00) Dollars, and that the same act as a supersedeas bond and also as a bond for costs and damages on appeal.

January 5, 1920.

WALTER H. SANBORN,
Senior Circuit Judge in and for the Eighth Circuit.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 5, 1920.

(Praecipe for Transcript on Appeal to Supreme Court, U. S.)

The Clerk of this Court is hereby directed to prepare and certify a transcript of the record in the above entitled cause for the use of the Supreme Court of the United States, and to be filed in the said The Supreme Court of the United States, pursuant to an appeal allowed in said cause, and to include in such transcript of the record the following, and no other, papers, to-wit:

1. The bill of complaint and answers of all the defendants, including the supplemental answer of Crosbie and Mitchell which was stricken (omitting, however, the exhibits thereto).

2. Plaintiffs' motion to strike the supplemental answer of Crosbie and Mitchell.

3. The order sustaining plaintiffs' motion to strike supplemental answer of Crosbie and Mitchell, and striking said supplemental answer.

4. Appellants' condensed statement of evidence at final hearing as the same appears in the printed record of this cause now on file in this court, pages 23 to 126 of said printed record.

5. Final decree of the District Court of the United States for the Eastern District of Oklahoma, for the plaintiff, United States of America, (appellee here), and against the defendants (appellants here), ordering cancellation of deeds, instruments and conveyances as prayed in the bill.

6. Assignment of errors on appeal from the District Court of the United States for the Eastern District of Oklahoma to the United States Circuit Court of Appeals for the Eighth Circuit.

7. Petition for allowance of appeal from United States Circuit Court of Appeals to the Supreme Court of the United States.

8. Assignment of errors on appeal from the United States Circuit Court of Appeals for the Eighth Circuit to the Supreme Court of the United States.

9. Order allowing appeal.

10. Citation with service.

11. Certificate of Clerk to record.

GEO T. BROWN,
PRESTON C. WEST.
Attorneys for Appellants, C. R. Privett, John O. Mitchell and J. E. Crosbie (Defendants in Trial Court)

We, the undersigned, attorneys for the complainant, United States of America, and for the defendants, H. R. Wilcox and Oil Production Company, herein, do hereby acknowledge receipt of the above designation of parts of the record necessary for the consideration of the errors assigned by appellants (defendants in trial court), C. R. Privett, John O. Mitchell and J. E. Crosbie, and waive the designating of any other parts of the record, and agree that the above includes all of the portions of said record material or necessary for the consideration of the errors assigned; and that any of the Judges of the United States Circuit Court of Appeals for the Eighth Circuit may sign an order fixing the supersedeas bond herein at the sum of $1,000.00, and allowing same to act as supersedeas as well as a bond for damages and for costs.

Dated this — day of November, A. D. 1919.

FRANK K. NEBEKER,
Assistant Attorney General for United States of America.
ROBERT R. BURNS,
For H. R. Wilcox.
EDW. H. CHANDLER,
FARRAR L. McCAIN,
For Oil Production Company.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 5, 1920.

United States of America to the United States of America, H. R. Wilcox and Oil Production Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from and after the date hereof, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit; wherein C. R. Privett, John O. Mitchell and J. E. Crosbie are Appellants and you are Appellees, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Senior United States Circuit Judge in and for the Eighth Circuit, this Fifth day of January, A. D. 1920.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Circuit.

Service of foregoing citation acknowledged this 8th day of January, 1920.

OIL PRODUCTION COMPANY,
By EDW. H. CHANDLER,
Solicitor.

H. R. WILCOX,
By ROBERT R. BURNS,
Solicitor.

ALEX. C. KING,
Solicitor General.

[Endorsed:] No. 5269. U. S. Circuit Court of Appeals, Eighth Circuit. C. R. Privett, et al., Appellants, vs. United States of America. Citation on Appeal to Supreme Court of the United States. Filed Jan. 19, 1920. E. E. Koch, Clerk.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of all

the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the præcipe of counsel for appellants, in a certain cause in said Circuit Court of Appeals, wherein C. R. Privett, et al., were Appellants, and the United States of America, et al., were Appellees, No. 5269, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acknowledgments of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twentieth day of January, A. D. 1920.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 27,457. U. S. Circuit Court Appeals, 8th Circuit. Term No. 702. C. R. Privett, John O. Mitchell, and J. E. Crosbie, appellants, vs. The United States of America, H. R. Wilcox and Oil Production Company. Filed February 2d, 1920. File No. 27,457.

Office Supreme Court, U. S.
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Clerk.

No. 206.

In the

Supreme Court of the United States.

October Term, 1898.

C. R. PRIVETT, JOHN O. MITCHELL, AND J. E. CROSBIE, ... Appellants,

versus

THE UNITED STATES OF AMERICA, ET AL., Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Statement of Case, Specification of Errors and Brief of Argument for Appellants.

A. A. DAVIDSON,
PRESTON C. WEST,
Solicitors for Appellants.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 236.

C. R. PRIVETT, JOHN O. MITCHELL, AND J. E. CROSBIE, - - - - - - - - - - - *Appellants,*

vs.

THE UNITED STATES OF AMERICA, *ET AL.*, *Appellees.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Statement of Case.

This is a suit by the United States on behalf of certain Indians to cancel various conveyances affecting the title to forty acres of land in Tulsa County, Oklahoma, described as Northeast Quarter (NE4) of Southeast Quarter (SE4) of Section Four (4), Township Sixteen (16) North, Range Thirteen (13) East. The history of the transactions out of which the case arises and its progress heretofore is as follows:

The lands involved were allotted as the homestead of Madison H. Brown, a Creek Indian of the

half blood. The allottee died a resident of Tulsa County, September 29, 1911, leaving surviving him a widow, Cilla Brown, an adult daughter, Esther Brown, and a minor son, Samuel H. Brown. Each of these inherited an undivided one-third of the described forty acres.

October 24, 1911, Cilla Brown, the widow, who was a full-blood, made a deed for her interest to W. E. Privett, and this deed was regularly approved by the County Court of Tulsa County. On the same day the daughter, Esther, conveyed her one-third to Privett. The minor's interest by proper proceedings in the County Court, was also conveyed to Privett. The guardian's deed was made April 3, 1912. Each grantor received a cash consideration of $150.00.

The original grantee, W. E. Privett, having developed tuberculosis, making it necessary for him to leave Oklahoma, and go to California, conveyed the tract to his brother, C. R. Privett, October 1, 1912, but this was merely to enable the latter to handle the property. C. R. Privett never has had any beneficial interest in it. (Rec., p. 82.)

After the legal title had been conveyed to C. R. Privett, he made an oil and gas mining lease which was subsequently in due course assigned to his co-defendant, Oil Production Company. Thereafter, he conveyed the land to John O. Mitchell, and J. E. Crosbie, subject to this oil and gas lease. Mitchell and Crosbie paid a thousand cash for the property.

subject to the lease, believing the title was perfect. At the time they made this purchase and paid the consideration, they were wholly without any notice, actual, constructive or implied, that there was any infirmity in the title. (Rec., p. 75.)

At the time the widow and daughter, Cilla and Esther Brown, conveyed in October, 1911, they made an affidavit that the minor child, Samuel Brown, was born February 23, 1906, and if this was true, the land was freed from all restrictions by the death of the original allottee, save the requirement that conveyances by full-blood heirs be approved by the proper County Court. But when the oil lease was made, the lessee desired that the facts as to who were Madison Brown's heirs, and showing their capacity to convey, be judicially established. Accordingly, Privett was required as a part of that transaction, to institute a suit for that purpose (Rec., pp. 84, 87, 88). This action was brought by C. R. Privett in the Superior Court of Tulsa County, and Cilla Brown, Esther Brown and Samuel H. Brown, the minor, regularly served with process and a guardian *ad litem* appointed for the minor (Rec., pp. 118, 121). Answer was filed for Samuel H. Brown (Rec., p. 122) and both Cilla and Esther disclaimed any right, title or interest (Rec., pp. 122, 123). *Cilla Brown testified in that case that Samuel H. Brown was born February 23, 1906, and the court so found* (Rec., p. 124). It also by its decree quieted C. R. Privett's title (now owned by Mitchell and Crosbie) against all claims

of either Cilla Brown, Esther Brown or Samuel H. Brown (Rec., pp. 124-5). This judgment, it will be observed, was rendered February 3, 1913, that is, six months before the sale to Mitchell and Crosbie (August 2, 1913) and this was the state of the record when they bought.

It should be further noticed that up to this time, the property was undeveloped for oil and gas; in fact, no oil was discovered on it until more than a year afterwards. (Rec., pp. 77, 78.)

But, in the year 1914, oil began to be produced from the property, and in April, 1915, this suit was instituted by the Government, upon the theory that Madison Brown's child, Samuel H. Brown, was born in April, 1906, that is subsequent to March 4, 1906, and therefore this homestead tract was, by the second proviso of the Act of May 27, 1908, inalienable and the conveyances heretofore recited invalid on that account.

At the time of the institution of the suit the Oil Production Company had no other title than the Privett lease, and answered denying that Samuel H. Brown was born after March 4, 1906, setting up the various transfers, the assignment to it of that lease and that it had acquired same for value, in good faith, and without notice of the claim asserted in this proceeding (Rec., pp. 5-9). Subsequently and on September 25, 1915, defendant, Oil Production Company, as a further protection, obtained a depart-

mental oil and gas lease from Cilla and Esther Brown and Samuel H. Brown, which it set up as a further muniment of title by a supplemental pleading (Rec., pp. 13, 15).

Mitchell and Crosbie answered, setting up their title under the instruments hereinbefore shown, denying that Samuel H. Brown was born after March 4, 1906, alleging that they had purchased in reliance upon the previous affidavits of the mother and sister and had paid the consideration of $1,000.00, without any knowledge or notice whatever of the present claim of complainant (Rec., pp. 9, 13). By amendment they afterwards plead and set up the judgment of the Superior Court of Tulsa County, as *res adjudicata* and an estoppel of record against the present contentions of the Government (Rec., pp. 16, 18). This amendment was on motion of complainant stricken, upon the theory, which was adhered to throughout the trial and in the final decree of the trial court, that the record and proceedings in the state court (the United States not having been a party thereto) constituted no bar to its prosecution of the present suit, and that that judgment was no defense (Rec., p. 19; see also Rec., p. 103).

The decree of the District Court of the United States was in favor of the Government upon every disputed matter of fact and of law; it cancelled all the conveyances through which appellants derived their title and perpetually enjoined them from collecting any rents, royalties or revenues from the land

involved (Rec., pp. 20, 22). There never having been any service on defendant, W. E. Privett, the bill was dismissed as to him.

This appeal is prosecuted to reverse the errors of the trial court in refusing to recognize the binding force and effect of the judgment of the Superior Court of Tulsa County, and in holding that complainant had established as a fact that Samuel H. Brown was born subsequent to March 4, 1906, and the affirmance by the Circuit Court of Appeals of the judgment of the trial court. (261 F. 351)

Appellants contend:

First: That the judgment of the state court upon the question of fact as to the date of Samuel H. Brown's birth concludes the world, and that it was error for the courts below to refuse to give faith and credit to that judgment and the estoppel thereby created.

Second: That even if the former judgment be disregarded the trial court made such a serious mistake in the consideration of the evidence that its conclusions ought not to be permitted to stand.

SPECIFICATION *of* ERRORS.

First: The United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the judgment and decree of the District Court of the United States for the Eastern District of Oklahoma.

Second: The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of the United States for the Eastern District of Oklahoma erred in sustaining the motion of appellee, United States of America, (plaintiff in the trial court), to strike out the supplemental answer of appellants (defendants in the trial court), J. E. Crosbie and John O. Mitchell, setting up the former adjudication of the matters contained in the bill herein by the consideration, judgment and decree of the Superior Court of Tulsa County, Oklahoma, and in striking out said supplemental answer, and in not reversing the judgment and decree of the trial court for said error.

Third: The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of the United States for the Eastern District of Oklahoma erred in refusing to admit in evidence the record of the proceedings of the Superior Court of Tulsa County, Oklahoma, in cause No. 930 in said court, to quiet the title to the lands in controversy herein, in which

case C. R. Privett was plaintiff, and Esther M. Brown, Cilla Brown and Samuel H. Brown were defendants; which record showed a former binding adjudication of the matters and things set forth in the bill of complaint herein, and in not reversing the judgment and decree of the trial court for said error.

Fourth: The United States Circuit Court of Appeals for the Eighth Circuit erred in refusing to hold that there had heretofore been a binding adjudication of the matters and things set forth in the bill of complaint herein; this refusal to so hold being contrary to the law and the evidence, and erred in declining and refusing to reverse the final judgment and decree of the District Court of the United States for the Eastern District of Oklahoma for that said trial court had also erroneously held that there had been no binding adjudication of the matters and things set forth in the bill of complaint.

Fifth: The United States Circuit Court of Appeals for the Eighth Circuit erred in refusing to hold that the District Court of the United States for the Eastern District of Oklahoma erred in finding and holding that Samuel H. Brown was born after the 4th day of March, 1906, and in not reversing the final judgment and decree of the trial court for such error.

Sixth: The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of the United

States for the Eastern District of Oklahoma erred in refusing to hold and find that Samuel H. Brown was born prior to March 4, 1906, and in not reversing the final judgment and decree of the trial court for such error.

Seventh: The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to hold that the District Court of the United States for the Eastern District of Oklahoma erred in ordering, decreeing and adjudging the cancellation of the several deeds, instruments and conveyances which are, in and by the final judgment, decree and order of the said trial court, ordered cancelled, and in not reversing the final judgment and decree of the District Court of the United States for the Eastern District of Oklahoma for said error.

Eighth: The United States Circuit Court of Appeals for the Eighth Circuit erred in declining and refusing to reverse the final judgment and decree of the District Court of the United States for the Eastern District of Oklahoma, and declining and refusing to remand this cause to said court with directions to enter a decree for appellants (defendants below), dismissing complainants' bill.

BRIEF *of* ARGUMENT.

The finding and judgment of the Superior Court of Tulsa County that Samuel H. Brown was born February 23, 1906, rendered that fact *res adjudicata*, and the District Court of the United States for the Eastern District of Oklahoma was foreclosed from retrying that issue.

Perhaps it will not be amiss to recapitulate the salient points of the present controversy. Madison H. Brown, a half-blood Creek Indian, was allotted the forty acres of land involved. He died September 29, 1911, leaving a widow, Cilla, an adult daughter, Esther, and a minor son, Samuel H. These were the only heirs. They each conveyed, for a valuable and adequate consideration, their interests. Appropriate proceedings, conformable to both state and federal law, were had in the proper County Court. The original grantee of these heirs had duly conveyed the legal title to C. R. Privett. At the time of their conveyances the mother and sister of the minor heir had made affidavit that he, Samuel H. Brown, was born February 23, 1906, and if this was true, the title of Privett was invulnerable. Privett negotiated an oil and gas lease, but as part of the consideration for the covenants and obligations of lessees, was required to agree that he would take the necessary steps to establish by judicial record the facts upon which his title was dependent for its validity. Conformably to

this agreement, suit to quiet title was brought in the Superior Court of Tulsa County, the three heirs brought before the court by regular process, the cause heard, and judgment rendered. The decree found, upon evidence, every fact necessary to a perfect title in Privett, and, among others, specifically the fact *"that the said Samuel H. Brown, minor defendant herein, was born on the 23rd day of February, 1906."*

This decree was rendered February 3, 1913, and two years afterwards, the present suit was instituted by the Government. The present suit does not undertake to attack in any way the regularity of the decree of the state court. No fraud or collusion is alleged. Neither by the bill, nor at any stage of the case, was it attempted to be shown that the purported judgment was in fact not a judgment because, by consent or collusion, or through ignorance or disregard of law, a plain statute of the United States was avoided, or sought to be, by going through the forms of a trial. Complainant wholly ignored the proceedings in the state court and predicated the right to relief upon the alleged fact that Samual H. Brown was not born until April 23, 1906, a question which, except for the state court's judgment, was wholly *in pais;* and the determination of which was not by federal law confined to any particular tribunal, nor required to be established by any prescribed method, or any exclusive evidence. The first paragraph of the bill is as follows:

"Your complainant, upon its own behalf, and on behalf of Samuel H. Brown, states that Samuel H. Brown is a son of Madison H. Brown, a duly enrolled citizen by blood of the Creek Nation of Indians opposite Roll No. 4088, being enrolled as a one-half blood Indian, and as such citizen of the Creek Nation received an allotment of land therein and selected a homestead from said allotment which is described as the

> Northeast Quarter of the Southeast Quarter of Section Four (4), Township Sixteen (16) North, Range Thirteen (13) East of the Indian Base and Meridian;

and that the said Madison H. Brown died on or about September 29, 1911, leaving surviving issue born subsequent to March 4, 1906, to-wit:

> Samuel H. Brown, born April 23, 1906;

and that by reason of the death of the said Madison H. Brown and the birth of Samuel H. Brown since March 4, 1906, being a three-quarter blood Indian, the homestead of Madison H. Brown became the property of and is now the property of the said Samuel H. Brown to the extent that the same shall remain for the use and support of said Samuel H. Brown during his life until April 26, 1931; and that the said Samuel H. Brown is now living."

The statute invoked is of course section 9 of the Act of May 27, 1908 (35 Stat. L. 312), which for the convenience of the court we here set out:

> "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land

shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: *Provided further,* That if any member of the Five Civilized Tribes of one-half or more Indian blood, shall die leaving issue surviving, born since March fourth, nineteen hundred and six, the homestead of such deceased allottee shall remain unalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nineteen hundred and thirty-one, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions. * * * "

The defendants, Mitchell and Crosbie, interposed the judgment in the state court as a defense and the fourth paragraph of their answer, as amended, was in part as follows:

"Defendants further state that the suit aforesaid was to quiet the title of the said C. R. Privett to said land as against the defendants therein; that said defendants, and each of them, including said minor Samuel H. Brown, were duly and legally summoned in said suit by personal service; that a guardian *ad litem* was by said court duly appointed for said minor defendant and filed answer therein as required by

law, and that all of the said defendants duly answered in said suit; that on the 5th day of February, 1913, same being a regular judicial day of the January, 1913, term of said Superior Court of Tulsa County, Oklahoma, said court duly heard, tried and determined all of the issues in the above entitled cause; that one of the issues therein was the date of birth of the said Samuel H. Brown, which was a fact to be determined in said suit, and that on the day and date last aforesaid the said Superior Court of Tulsa County entered a decree in said suit, finding as a fact, among others, that Samuel H. Brown was born on the 23rd day of February, 1906, which was prior to March 4th, 1906, and not subsequent thereto, as alleged in the bill of complaint; a copy of which said decree is attached hereto, filed herewith, made a part hereof and marked Defendants' Exhibit 'B.'

"These defendants state, that although the United States of America, the complainant in the instant case, was not a party to the said suit in the Superior Court of Tulsa County, Oklahoma, yet the complainant herein has no right, title, interest or estate in and to the land described in the bill of complaint, and has no right or authority to institute or maintain this suit, except upon the theory that the said minor, Samuel H. Brown, has some right, title, interest or estate in and to said land, and that the said Samuel H. Brown is the real party in interest herein, and the instant suit is in effect a suit brought by the United States of America for and on behalf of the said minor, Samuel H. Brown. That said Samuel H. Brown was a party to the said suit in the Superior Court of Tulsa County, Oklahoma, and all his rights in and to said land

adjudicated therein; that all of the issues in this instant cause have been and were by the Superior Court of Tulsa County, in the suit above mentioned, duly tried, heard, found and determined against said Samuel H. Brown, and in favor of the grantor of these defendants; that the judgment and the decree aforesaid is final and was not appealed from by the said defendant, Samuel H. Brown, or any of the said defendants, by reason whereof the issues herein are *res adjudicata.*" (Rec., pp. 17-18.)

The learned trial court not only struck out this defense upon motion of the Government (Rec., p. 19), but at the trial refused to admit the judgment in evidence (Rec., p. 103); which was, of course, consistent, though as we maintain, altogether erroneous. We are persuaded that the court was laboring under a misconception which was two-fold: *First*, because the nature of the present proceeding was, as we believe, mistaken; and *second*, because the decisions of this court, were wrongly interpreted.

That the United States has the right and the authority, in a proper case, to maintain an action at law or a suit in equity, cannot, of course, at this date be questioned. We certainly feel grateful that it is so. Anything less would be the facile means of obstructing its proper functions and evading its wise and wholesome regulations. But the cases wherein the United States may become an actor all fall, we think, into some one of the following classes, and the measure of relief obtainable in a given case, must

necessarily be determined by the character and capacity in which the sovereign proceeds.

First. The Government may sue as a proprietor to protect or assert a direct property right. As the owner of property in practically every state of the Union, it has the same right to have it protected and to resort to any court for that purpose as other persons have.

—*Cotton* v. *United States*, 11 How. 229;
United States v. *San Jacinto Tin Co.*, 125 U. S. 273.

Second. The Government may institute and maintain appropriate suits or actions when it has a public policy to uphold, enforce, and protect against violation, whatsoever form the infringement may take.

—*In re Debs*, 158 U. S. 564;
Heckman v. *United States*, 224 U. S. 413.

Third. The Government may properly proceed by suit, when, although it has no pecuniary interest in the remedy sought, it is nevertheless under obligation to the party who will be benefited by the action thus sustained for his use. In all such cases, the United States stands in the relation of a *quasi*-trustee.

—*United States* v. *Hughes*, 11 How. 552;
United States v. *San Jacinto Tin Co.*, *supra*.

Now, obviously, the present suit does not fall within the first enumerated class, for clearly the United States has parted with all pecuniary interest in the subject matter. The land has been absolutely

conveyed, free and clear of even the possibility of reverter in the United States.

No more can it, we think, be successfully maintained that it is within the second classification. Undoubtedly, it is the policy of the Government to impose certain restrictions upon alienation of Indian allotments in what were formerly the Five Civilized Tribes. It has unquestioned authority to prevent the non-observance of these restrictions. But this is not such a case. *What the judgment here established was, that by reason of the existence of a fact, in no manner dependent upon anything the United States has done, or any enactment it had proclaimed, there was no such existing restriction with regard to the subject matter dealt with.* It is a wholly different proposition from a decision rendered in the teeth of a statute proclaiming that the very thing sought to be done may not be done. Here the Superior Court gave full faith and credit to the supreme law of the land, and only proceeded to a determination of facts which in no wise contravened that law. Its judgment was not contrary to, or in derogation of, any law of the United States, but in accord with and in aid of that law.

This distinction seems to us as obvious as the line of cleavage between the finding of a jurisdictional fact and the decision of a court that as a matter of law it has jurisdiction over a cause of action where it has none.

This case must accordingly fall within the third head and is, therefore, a suit by the United States which can be maintained, if at all, merely by reason of the obligation of the Government to its ward; the latter being the only party to be benefited. It is to all intents and purposes the suit of Samuel H. Brown, prosecuted in his behalf by the United States, in its representative capacity. The right of the Government as a plaintiff was derivative. As was said in the *Heckman* case, in meeting the contention that parties might, after a Government suit, be harassed with further litigation by the allottees in their own names:

> "There can be no more complete representation than that on the part of the United States in acting on behalf of these defendants."

It was held in *United States* v. *Hughes, supra*, that when the Government had improvidently issued a patent to one man, when another had a better right, it could cancel the patent by a suit in equity for the purpose of putting itself in position to make a patent to the right party. But had the individuals themselves already litigated the question of their rights upon a proposition involving no ruling contrary to the federal statutes, the Government would have been thereafter foreclosed on that point equally with themselves.

We think the fundamental error into which the courts below fell was that they failed to discriminate between cases of this class and those brought by the

sovereign to enforce a high prerogative or policy, where it appears that through the form and semblance of a judicial proceeding, the restrictions on alienation imposed by the United States have been disregarded or nullified. Here the former judgment is not, as we have said, in derogation of any restraint imposed by the Government, but, under the facts found by the state court, there does not exist any such restraint at all. How, therefore, can it be said that the judgment here involved is opposed to any law or policy of the United States? It proceeded directly under and in obedience to that law and that policy. It dealt with facts as open to the state courts to determine as to the courts of the United States. If such be not the case, then there is no lawsuit in Oklahoma wherein any right to Indian land is involved, restricted if one state of facts exists and unrestricted if another obtains, in which any state court can pronounce a final judgment. The very statement of such a proposition is sufficient to at once challenge the attention and strongly suggest error in the processes by which it is arrived at.

It appears that Congress had in mind the distinctions we have here made when by section 6 of the Act of May 27, 1908 (35 Stat. L. 312), it provided for the so-called "District Agents," with, among others, the following powers:

> "The Secretary of the Interior is hereby empowered, under rules and regulations to be prescribed by him, to appoint such local representatives within the State of Oklahoma, who

> shall be citizens of that state, or now domiciled therein, as he may deem necessary. * * * And said representatives of the Secretary of the Interior are further authorized, and it is made their duty, to counsel and advise all allottees, adult or minor, having restricted lands, of all of their legal rights with reference to their restricted lands, without charge, and to advise them in the preparation of all leases authorized by law to be made, and at the request of any allottee having restricted land he shall, without charge, except the necessary court and recording fees and expenses, if any, *in the name of the allottee*, take such steps as may be necessary, including the bringing of any suit or suits and the prosecution and appeal thereof, to cancel and annul any deed, conveyance, mortgage, lease, contract to sell, power of attorney, or any other encumbrance of any kind or character, made or attempted to be made or executed in violation of this act or any other Act of Congress, and to take all steps necessary to assist said allottees in acquiring and retaining possession of their restricted lands."

In the instant case, suppose that confessedly Samuel H. Brown had been born after March 4, 1906, but that the question of his paternity was shrouded in as much doubt as the Government has now cast upon the date of birth, and he had brought suit in a state court against an occupant of the property in dispute upon the allegation that he was the minor son of Madison H. Brown, deceased, and that court had found, upon evidence, and as a fact, *that he was not the son of Madison H. Brown, the allottee of this*

land, but of another Brown, also a Creek Indian, and the allottee of other lands. Such a suit could not be differentiated from the one at bar. Is it, therefore, conceivable, that in the case supposed, the United States might, in a subsequent suit, instituted as this one was, relitigate those very questions because forsooth it was possible its court might reach a different conclusion as to the facts; and because, if the last court was persuaded to hold the plaintiff to be the son of the Brown whose homestead allotment was involved, it would result that by a law of the United States it was inalienable and he was entitled to the enjoyment of it until 1931?

The first head note to the opinion of the Circuit Court of appeals reads: "A fact determined by a state court in a suit against a minor heir of an Indian allottee *held* not *res judicata* in a subsequent suit on behalf of the minor by the United States, which was not a party to the prior suit."

In other words, reduced to its lowest terms, we are brought to this: That while the date of birth of Samuel Brown was a justiciable question and the Superior Court of Tulsa County had jurisdiction of the parties and the subject-matter, it could render a binding judgment only if it found the issue in accord with the present contention of the government.

Our research has not directed us to any adjudicated case, state or federal, where a record is presented which is authority for the holding of the lower courts. True it is there have been a number of de-

cisions, dealing with many of the principles under discussion, but, if we understand them rightly, none to the very point here involved. It is also true that in at least one case in this court (*Bowling* v. *United States*), language is used broad enough in its literal terms to reach it, but we think it quite clear this language was not uttered with the purport or intent attributed to it in the decree and opinion complained of. We very respectfully submit that neither *Goodrum* v. *Buffalo*, 162 Fed. 817; *Truskett* v. *Closser*, 198 Fed. 835; *Bell* v. *Fitzpatrick*, 53 Okla. 574; *Heckman* v. *United States*, 224 U. S. 413; *Bowling* v. *United States*, 191 Fed. 19, nor *Bowling* v. *United States*, 233 U. S. 528, is contrary to anything we here urge.

Goodrum v. *Buffalo*, *Truskett* v. *Closser* and *Bell* v. *Fitzpatrick*, were none of them suits by the Government but were between private parties, and we submit that an analysis of them demonstrates that they are not authority for the position which the Government has taken in the case at bar. Each of them discloses a palpable attempt to override plain provisions of law. So far as judgments were involved, the so-called judgments were such as no court had authority to render.

On the other hand *Heckman* v. *United States* (224 U. S. 413), was a suit prosecuted by the United States to enforce and protect its policy of restraint upon the alienation of lands allotted to citizens of the Five Civilized Tribes. In that case, however, no question of *res adjudicata* was involved. There had

been no previous judgment or attempted judgment. If it may be said that the litigation instituted by the United States in behalf of its wards was in one sense a suit as trustee, by it in behalf of these allottees, and that they were the direct and immediate beneficiaries thereof, so that to such extent the right of the United States was derivative, yet it is nevertheless clear that the United States was prosecuting that litigation also in its own behalf and in its own right, to prevent the flagrant disregard of a high policy which the Government believed essential to be maintained. What was held in the decision, and the language employed by the court in promulgating its conclusion, must be understood with reference to this phase of the case as well as with reference to the other. But in point of fact no utterance of that decision lends, as we conceive, any support to the ruling in the instant case. The bill which was filed by the Government, upon the recommendation of the Secretary of the Interior, was to cancel numerous conveyances of allotted lands made by members of the Cherokee Nation. The particular suit upon which the decision was rendered dealt with conveyances by Cherokee allottees of the full-blood, and these conveyances were all held to be in violation of the restrictions which the United States had imposed. The principal contentions of the defendants were that the United States had no capacity to maintain such suit, and that it was indispensable that the allottees whose lands were involved be made parties thereto. Answering these

contentions, Mr. Justice HUGHES, who delivered the opinion of the court, after citing and discussing pertinent authorities, said:

> "Undoubtedly an allottee can enforce his right to an interest in tribal or other property (for the right is expressly granted) and equally clear is it that Congress may enforce and protect any condition which it attaches to any of its grants. This it may do by appropriate proceedings in either a national or a state court."

Specifically with reference to the proposition that the allottees were necessary parties it was declared:

> "It was not necessary to make these grantors parties, for the Government was in court on their behalf. Their presence as defendants could not add to, or detract from, the effect of the proceedings to determine the violation of the restrictions and the consequent invalidity of the conveyances. As by the Act of Congress they were precluded from alienating their lands, they were likewise precluded from taking any position in the legal proceedings instituted by the Government to enforce restrictions which would render such proceedings ineffectual or give support to the prohibited act. The case could not be dismissed upon their consent; they could not compromise it; nor could they assume any attitude with respect to their interest which would derogate from its complete representation by the United States. This is involved necessarily in the conclusion that the United States is entitled to sue, and in the nature and purpose of the suit."

Responsive to the suggestion that grantees might thus be placed in danger of double litigation, it was further said:

> "And it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its courts to cancel conveyances in violation of the restrictions prescribed by Congress, these wards should themselves be permitted to relitigate the question."

We cannot believe that this case can be made an authority for relitigation by the United States of a simple issue of fact after that issue has already been determined by a court of competent jurisdiction, when the suit in which it is attempted to relitigate that question, is, as here, brought by the United States in its representative capacity, and is in substance and effect the suit of the Indian himself and not a suit predicated upon the right of the Government to restrain a violation of its governmental policy.

The case of *Bowling* v. *United States* (in which the decision by the Circuit Court of Appeals is reported in 191 Fed. at page 19) and the decision of this court in 233 U. S. 528, apparently was largely responsible for the conclusion that the prior judgment of the state court in *Privett* v. *Brown*, did not constitute *res adjudicata*. As we have already agreed, that language is broad enough to cover the ruling, if we look only to the literal terms employed, and do not bear in mind the character of the case actually there under consideration. It will be recalled that

this was *a suit by the United States to enforce its policy of restrictions on alienation by Indians*, and while incidentally and necessarily the heir of the original allottee was benefited thereby, it was a suit by the Government, in its own right. As was said by the Circuit Court of Appeals:

> "The right of the Government is not derivative and is in its own behalf, not as landowner it is true, but governmentally to enforce its laws."

It was instituted for the purpose of setting aside various conveyances of a tract of land originally allotted to William Wea, and to declare void a judgment rendered by the United States Court for the Western District of Indian Territory, which decreed a transfer of the land. The conveyances, as well as the judgment, were prior to expiration of the twenty-five-year period of restriction on alienation imposed by the Act of Congress. It was accordingly held that it was competent for the United States in carrying out its declared policy with respect to the Indian to maintain this suit to set aside these conveyances in violation of the restrictions on alienation imposed by Congress, and that this right was not barred by a decree entered against such allottees, in a suit for specific enforcement of their contract to convey, to which the United States was not a party, since the suit was in its own right and the allottees not necessary parties thereto. In the opinion of this court it was said:

"It is contended by the appellants that when the allotment was made, and the allottee became a citizen of the United States, the guardianship of the Government ceased. But this contention is plainly untenable. *Tiger* v. *Western Investment Company*, 221 U. S. 286. And it is no longer open to question that the United States has capacity to sue for the purpose of setting aside conveyances of lands allotted to Indians under its care, where restrictions upon alienation have been transgressed. Since the decision below, the precise question has been determined by this court in *Heckman* v. *United States*, 224 U. S. 413, and it was there held that the authority to enforce restrictions of this character is the necessary complement of the power to impose them. It necessarily follows that, as a transfer of the allotted lands contrary to the inhibition of Congress would be a violation of the governmental rights of the United States arising from its obligation to a dependent people, no stipulations, contracts, *or judgments rendered in suits to which the Government is a stranger, can affect its interest*. The authority of the United States to enforce the restraint lawfully created cannot be impaired by any action without its consent. *Heckman* v. *United States*, *supra*, p 445. If, therefore, the conveyance by the allottee's heirs, in the present case, would otherwise have been subject to cancellation, it was not saved by reason of the judgment entered in their suit against the purchaser."

It will be noted that it is broadly stated that, as transfers of the allotted lands contrary to the inhibition of Congress would be a violation of the governmental rights of the United States arising from its

obligations to a dependent people, no stipulations, contracts *or judgments rendered in suits to which the Government is a stranger,* can affect its interest. But this falls far short of stating that any adjudication upon a collateral matter by a competent tribunal is without any force and effect if thereafter officers of the Government shall come to the conclusion that the matter was wrongly decided on the facts, and a suit is thereafter instituted in the name of the Government to recover the land for its ward. The kind of suits which the learned justice had in mind were suits which were instituted by the Government in its own right for the purpose of enforcing its laws and policies, and with that predicate, his statement that no judgments rendered in such a suit, where the United States was not a party to the record, could have the effect of foreclosing its right. Had the state court in the instant case found as a fact that the minor heir was born after the 4th day of March, but nevertheless proceeded to give judgment contrary to the provisions of the federal statute, a different question would have been presented. It may be, and doubtless is also true, that had the Federal Government prescribed by an authoritative Act of Congress the only method by which the question of the date of birth could be determined and the state court had violated this prescribed rule, it would have been such a violation of the governmental policy as would have entitled the United States to sue in its own right to enforce this law, and that no stipulation, con-

tract, devise, suit, judgment or decree would have presented any obstacle to such a proceeding, or constituted any defense thereto. It might have been ignored just as the purported judgment in the *Bowling* case was ignored. But here, as we have attempted to show, the Government's suit is not of that nature or character, and the decision of the state court is not violative of any law or policy of the United States, and hence the present action is not within the rule announced.

We assert with confidence that the state court, having jurisdiction both of the parties and of the subject-matter, and having violated no law or policy of the Federal Government in proceeding to its judgment and decree therein, that judgment and that decree standing unreversed and unannulled, are not open to impeachment by either the parties or their privies, in a collateral action or proceeding. That so far as this case is concerned, the United States is in privity with the original parties in the action in the state court. That the ruling of the trial court in striking the defense of *res adjudicata* from the answer of Mitchell and Crosbie and in thereafter refusing to receive evidence of the existence of the judgment so pleaded, and in rendering judgment against these defendants, and the opinion of the Circuit Court of Appeals affirming the same, were erroneous and should be reversed.

Homer vs. McCurtain, 40 Okla., 406;

Rice vs. Ruble, 39 Okla., 51;

Freeman vs. First Natl. Bank, 44 Okla., 146.

II.

The decree in complainant's favor in this suit was the result of a serious mistake by the chancellor in his consideration of the evidence; and his finding that Samuel H. Brown was not born until after the fourth day of March, 1906, is contrary to the great weight of the evidence.

On the question of fact involved we point out that there was no consideration given, nor finding by the intermediate appellate court. The evidence has only been considered by the trial court.

It is a settled, and no doubt salutary rule, of Federal decision, that where a chancellor has considered conflicting evidence and made his finding and decree thereon they should be taken as presumptively right, and, unless a serious mistake has been made, be permitted to stand.

But it is also both the right and the duty of the reviewing court to consider the whole evidence in order that there may be no miscarriage of justice. And we feel that by the finding of the trial court a serious mistake has been made and a grievous wrong inflicted upon parties who are wholly without fault.

We are impressed that the erroneous view taken of the law by the trial judge produced an attitude of mind which colored his judgment on the issues of fact. The mere circumstance that it was an Indian case no doubt also had its influence. But we venture the assertion that few cases have come into any of

the courts involving the purchase of Indian land, which was so entirely free of any taint of fraud or overreaching, as the one at bar. And when we say this we do not forget that the witness, Esther Brown, and her husband, Legus Brown, gave some testimony to the effect that when W. E. Privett negotiated the purchase of the land, Cilla Brown was under the influence of liquor; and that Privett gave her at least one drink while they were all at the bank. But other wholly disinterested witnesses swore that she was not intoxicated, and it must be borne in mind that Esther was directly interested as a claimant and Legus was her husband. The consideration paid ($450.00) would seem entirely adequate in view of the fact that in spite of the rapid growth and development of the country it sold for only a thousand dollars two years later. All subsequent vendees have purchased in absolute good faith and parted with their money without any knowledge or notice of any infirmity of title.

When Mitchell and Crosbie bought not only did they have no notice of any invalidity in the title, but, on the contrary, there was what appeared to be in all respects a valid judicial finding of facts which made the title perfectly good and marketable.

Besides all this, neither the heirs nor the United States asserted any defect until nearly four years subsequent to the time the heirs originally conveyed, *and the attack was not made until after oil had been*

discovered upon the premises and a pronounced change of value thereby wrought.

In these circumstances, it would seem that the facts upon which the Government relies ought to have been proved with the utmost strictness. Undoubtedly anything less than the most cogent, clear and convincing proof, ought not to work the result which the decision below, if affirmed, will accomplish.

And among other circumstances entitled to some weight, is the embarrassment of defendants by the death, during the four years' delay, of practically all the disinterested witnesses who were capable of testifying from personal knowledge as to the actual date of Samuel H. Brown's birth. And also the death of Cilla Brown, the mother, who, to quote her own declaration on the subject, ought to have known more about that event than any other person.

Now, on the day of the original transaction, both Cilla Brown and Esther Brown not only made deeds to the property in dispute (and these conveyances were of themselves an affirmation of the right to convey), but also made an affidavit in which they solemly asserted:

> "We, Cilla Brown, Esther Brown, of lawful age, being first duly sworn, upon our oath depose and say that we are personally acquainted with Samuel Brown and we know that he is the son of Madison H. Brown and Cilla Brown, and we know that the said Samuel Brown was born on the 23rd day of February, A. D. 1906, and which at this date is over the age of 5 years." (Rec., p. 112.)

So far as Cilla Brown is concerned, this is unimpeached by any subsequent act or declaration except what appears in the transcript of evidence in the County Court in connection with the approval of the conveyance of her interest (Gov. Ex. 3, Rec., pp. 109, 111). This purports to show the following question and answer:

Q. How old is Samuel?
A. He will be six years old this April coming.

As this proceeding was in October, 1911, the foregoing answer would place the birthday in April, 1906. But aside from the fact that the answer does not categorically state the year of birth, and that full-blood Indian witnesses are not notorious for skill in rapid arithmetical calculations, there is to be considered the opportunity for mistake in the taking this testimony in shorthand, or in transcribing it. The lawyers and the court could not possibly have understood that she gave this answer at that time, for it would, *ipso facto*, have put an end to the proceeding. Neither the County Court nor any other court would have had authority to approve disposal of the land. It is very probable, therefore, that the young lady who took this record was in error as to what she heard, or in the symbols she put in her note book. So far as the writer is advised the sign for February and April may be very similar in shorthand. Certain it is that Cilla Brown repeatedly stated both under oath and not under oath that this child was born in February, 1906. As late as 1913 she so testified in

the Superior Court. Then the question and answer were in the following form:

Q. When was Samuel H. Brown born?
A. February 23, 1906. (Rec., p. 115.)

Now, just a short time before this, C. R. Privett, who brought this suit in the Superior Court, had received a suggestion that Cilla's previous statements placing the boy's birth in February might be erroneous, as appears from the following testimony:

Q. Who is Billy Brown? Any relation of Madison Brown?
A. Brother as I understand.
Q. That was before this suit was brought?
A. No, it was after the suit was brought.
Q. Did Billy Brown tell you at that time anything about when the boy was born?
A. I don't think he claimed to know when the boy was born but he did intimate that he thought this boy was born too late to get an allotment.
Q. You did have notice of the fact at that time that there was some question about this title?
A. Yes, that much.
Q. Did you tell Mr. Crosbie and Mr. Mitchell at the time you sold this land that that question had been raised?
A. No, I don't think I did. (Rec., p. 90.)

He accordingly pressed Cilla about the matter and urged her not to go on the witness stand and perjure herself if her affidavit did not state the truth.

A. I said Cilla, if you swore a lie in that affidavit don't go and swear another one. I said Billy Brown intimated this boy was born after the rolls closed. And I said I have never been a party

to anything that was crooked, and if that isn't right, I want you to correct it. And she went into the matter, and said "I guess I know when my kid was born." Those were the very words. (Rec., p. 91.)

To all of this must be added of course Cilla Brown's conduct through several years, during which time not only by express declaration, but by her sale, by participation in the County Court proceedings, by disclaimer in the Superior Court, and her testimony there, she unequivocally asserted that her child was born in February, 1906.

Esther Brown, as appears, was also a consistent witness to the February date, *until after oil was discovered and this suit instituted.* Her testimony now must be read in the light of the changed conditions. But that which impeaches it in a way that speaks louder than any oath she has ever taken is the fact that in 1913, after she and her husband had talked with the District Agent and with Privett about the pending suit in the Superior Court, she signed a disclaimer. It seems an absolute certainty that she did not at that time believe what she afterwards swore at the trial in the court below. Had she believed it she would assuredly have so stated to the District Agent, and he would as certainly not have allowed her to disclaim. He was the duly constituted governmental agency for aiding and advising these people. It is to be presumed he did so faithfully. As we have already stated, it was not possible for appellants, as

to many of the matters involved, to produce any direct testimony, but such circumstances as this are indeed the most persuasive proof.

Legus Brown, whose testimony begins at page 23 of the record, was the chief witness in complainant's behalf. His testimony is so seriously impeached by his previous course of conduct and by admissions on the stand that we frankly believe it should not be given any weight whatever. He was living with Madison H. Brown when this child, Samuel, was born, but he was himself then but a mere youth. It is not without considerable significance that he is unable to tell his own age. At page 30 of the record he gives the following testimony:

Q. As a matter of fact, Legus, you don't know how old you are do you? A. No, sir; I don't know.
Q. You were a right young fellow in the spring of 1906, weren't you? A. I was.
Q. According to the Dawes Commission roll you would have been about seventeen?
A. Yes, be seventeen the following fall I believe, yes.

But let us go back and look at some other matters that ought not to be, and cannot be, ignored. In the first place, he joined in the execution of the deed which his wife, Esther Brown, made October 24, 1911, to W. E. Privett. This, of course, was in itself some evidence of the belief at that time that the wife had a right to make this deed. He did not join in the declaration or affidavit which Cilla Brown, his mother-in-law and Esther, his wife, made at the same time,

and in his testimony at the trial of the present case he undertakes to explain that by saying that he knew it did not correctly give the date of the birth of the boy, Samuel. Yet it develops that in point of fact he and W. E. Privett got into a controversy about the deduction of a small sum out of the consideration money at that time, and it seems to us entirely more reasonable that his declining to sign the affidavit was due to this fact. It is not disputed that he made threats at the time that he was going to obstruct the completion of the title when it came to getting the proceedings put through the County Court for the boy's interest. As this was some seven years nearer to the date of this child's birth than the trial of this case in the District Court of the United States, it is strange indeed that he did not carry out this threat if he knew that Samuel was not born until after March 4, 1906. But at any rate his standing by during four years and taking no action to correct the wrong his wife had done, if what he now tells us was really the truth, is the very strongest sort of evidence that his present contention is an afterthought. This still is not all. In 1913 (oil not yet having been discovered or any great change in values having occurred), he was personally interviewed by one of the appellants, C. R. Privett, at Sapulpa, and he permitted his wife, with the knowledge and consent of the District Agent, to sign a disclaimer of any right, title or interest in these premises, and this could only be the truth if in point of fact Samuel H. Brown

was born at some time prior to the 4th of March, 1906.

Q. Along during the first part of the year 1913 didn't this Mr. Privett who is here in court, Mr. C. R. Privett, come there and see you about this matter and tell you that he had brought a suit in the Superior Court of Tulsa County to quiet the title to this land against Esther, your wife, and Cilla, and some others, that was in the Indian Agent's office where you were working at that time, I believe it was the District Agent?

A. He came there, C. R. Privett came there and wanted her to sign a quitclaim of all her rights and title in some land. And so I didn't know whether or not she would sign. So I taken her up to the office of the field clerk and I asked Mr. McDaniel about it. And so Mr. Privett told Mr. McDaniel, talked to him awhile and came back and Mr. McDaniel said it was all right to have her sign and suggested that he put the description of the land in; and so Mr. Privett did with a pencil or pen before my wife signed it; there was nothing said about a suit at all.

Q. Isn't it a fact instead of being a quitclaim it was a disclaimer that was to be filed in that very suit, isn't that what it was; he wanted to find out whether she would execute it or not?

A. I understood it was a quitclaim.

Q. It might have been a disclaimer? A. Yes. (Rec., p. 32.)

If this witness has known from the beginning that the child, Samuel H. Brown, was born at the date he now testifies then he was guilty of most unconscionable conduct in this matter. He must have concealed the truth from the District Agent who

would certainly have advised to the contrary if it had been disclosed to him that there was a minor child of Madison H. Brown, the original allottee, born at such a time as rendered the land inalienable and entitled the child to hold the same for twenty-five years. We think it is not too harsh to say that anyone whose conscience would permit him to adopt such a course of procedure would not hesitate very much about changing his testimony after the discovery of oil if he found it was distinctly advantageous for him to do so.

But it is difficult indeed for anybody to tamper with the truth and not by some ineradicable thumb mark leave the print of falsity apparent. There can be no doubt, we think, in the world but that W. E. Privett, who made the purchase of this property in 1911, went to the State of California in October of 1912 and has never been back here since. (See Rec. p. 83.) And yet this witness undertakes to state that he had a conversation with W. E. Privett about this suit in the Superior Court of Tulsa County, which was not filed until January 7, 1913 (Rec., p. 119). This appears to have been manufactured out of the whole cloth and we think furnishes absolute justification for disregarding his testimony altogether. Attention is invited to page 31 of the printed record where the following questions and answers appear:

Q. Did you ever have any conversation with C. R. Privett, who is one of the defendants in this case in regard to this matter? A. No, sir.

Q. Never did? A. Never did.
Q. At any time? A. No, sir.
Q. I will ask you if you didn't know of a suit which was brought in the Superior Court in Tulsa County in the year 1913. A. No, sir.
Q. Never knew anything about it?
Q. No, sir; only that W. E. Privett has spoken to my wife on our way coming here to Muskogee on a train. He happened to be on the train and in the rear seat and got up and came there. He says: "Esther, I brought a friendship suit but you don't have to be there. So it is just a matter of friendship suit that I brought so you don't have to be there." That is all that was said. That is the only time he mentioned about a suit.

The other witnesses used by the Government, were very largely relatives and family connections. They were separated by some twelve years or more from the incident which they undertook to testify about. Yet, as to the one crucial question of the date of the birth of Samuel H. Brown, they undertake to fix it as having occurred in the month of April instead of in the month of February as testified to by his mother. Very few of them could give any other date about matters of equal interest, and some of very much more recent occurrence. For instance, take the testimony of E. B. Maxey, a witness for the Government, whose evidence begins on page 40 of the printed record. His principal reason for asserting that he remembered the date of the birth of this boy is because he had himself executed a certain mortgage in June of the year 1906, and knew the boy

was born before this paper was executed. Note the following questions and answers:

Q. Mr. Maxey, did you have any paper of any kind in your possession that will fix the year in which this boy was born? A. Yes, sir.
Q. What is it? A. It is a mortgage.
Q. When was that mortgage given?
A. June 6, 1906.
Q. By whom was the mortgage given?
A. It was given by John Williams and myself.
Q. Who was John Williams?
A. He was a renter on the farm.
Q. What was the purpose of giving that mortgage?
A. It was for to get some money to make a crop.
Q. Working your place that year? A. Yes, sir.
Q. And when was that relative to the time Samuel H. Brown was born, before or after Sam was born?
A. That was after Sam was born that this mortgage was made. (Rec., p. 43.)

Of course, there is nothing in this testimony at all in conflict with the boy's having been born in February instead of April. And this same witness on being cross examined, admitted that he had nothing to fix the precise date of the birth of this child. Asked how long he had continued to live in that neighborhood after 1906, he said he had contined to reside there until "the last part of '14 or the last part of '16" (Rec., p. 43), thus leaving himself a margin of two years in regard to an event certainly of equal importance to him as the birth of a child in some other family in the neighborhood. His further cross examination shows the absolute unreliability of his en-

tire testimony and this is but typical of the balance of the witnesses produced:

Q. You have nothing to fix in your mind the precise date of the birth of this child whose age is in controversy here, excepting the condition of the the crop at the time? A. Yes, sir.
Q. That is all that you are going by? A. Yes, sir.
Q. This mortgage you have referred to, you say was made in June? A. Yes, sir.
Q. And that was after he was born? A. Yes, sir.
Q. Neither you nor your wife were present at his house at the time of his birth? A. No, sir, I wasn't, I know.
Q. You do not think you wife was?
A. Well, no, I do not think she was.
Q. You haven't had any particular occasion until recently to try to fix any date for that, have you?
A. No.
Q. In other words, there wasn't anything to fasten upon your mind at the time of the occurrence the actual date of the birth of this boy?
A. No, there wasn't nothing, nothing that I would know the date by, the exact date.
Q. And at the time of the death of Madison Brown, the child was five years—five or six years old, wasn't he?
A. Well, I don't remember just what year Madison died but it seems to me it was about six years ago, and the child would be about six years old then, would be about six years ago he got killed or died.
Q. You don't know the date Madison Brown died?
A. No, I don't.
Q. You never heard the matter of the date of the birth of this child discussed at all until some time after the death of Madison Brown, did you?
A. No. (Rec., pp. 43, 44.)

This man Maxey's wife also testified, and although she swore in her direct testimony that the child was born in April, she could not give any other date about events that it would seem ought to have left an equally strong impression upon her mind.

Q. Do you remember when Madison Brown died?
A. Well, I don't remember just the date; it was in the fall.
Q. Do you remember the month?
A. I think it was in September, I won't say for sure.
Q. You don't know? A. No, I don't.
Q. That happened several years after the boy's birth, didn't it? A. Yes, sir. (Rec., p. 49.)
Q. Did you know that Cilla and Esther had sold this land shortly after Madison died?
A. Well, I heard they did.
Q. You don't know?
A. No, I didn't know; Cilla moved away from our neighborhood.
Q. When did Cilla move away from there?
A. I don't remember.
Q. Don't you remember that date either?
A. No, I don't because I didn't pay any attention to it. I never visited after my brother's death, and I don't remember.

* * * * * * *

Q. Why don't you remember some of these other dates that occurred there and even those that occurred a good while after that?
A. Well, I don't know; I didn't give it study, I reckon. I don't know. (Rec., p. 50.)

S. W. Brown, the grandfather of this child, the date of whose birth has given rise to so much controversy, was produced as a witness by the Govern-

ment, and like the balance of the witnesses, he started off by fixing the date in April, but upon cross examination he showed that he was innocent of any real knowledge of the date.

On Direct Examination.

Q. So you know what time of year it was?
A. It was along in the spring, something like it.
Q. Why do you say that, Mr. Brown? A. Which?
Q. What impresses that upon you that it was in the spring?
A. He was up there building a little shed for one of my boys up there.
Q. Madison Brown was up building a shed?
A. Yes, sir.
Q. For you?
A. For my son.
Q. When was that?
A. It is not exactly my son, it is my wife's niece; he was building some kind of a shanty for him.
Q. In what month was that?
A. It shows in my mind that it was long about, that if I can recollect right, it was along in April. It was in the spring, I know.
Q. And at that time you ascertained that this child, Samuel H. Brown, was born? A. Yes, sir. (Rec., p. 52.)

On Cross Examination.

Q. Isn't it a fact that you did have a conversation with him (P. L. Thurman) in which he asked you about the date of the birth of this child Samuel Brown and you told him you didn't know when it was?
A. Well, that is what I said now.
Q. What you said now?
A. I don't know the date, but he was there I know.

because he was building a shed for that fellow and he went home and Mr. Swann, he was working for me at that time and he was building a house, and Madison too; so that is the way the thing stands.

Q. That is the only thing you do know about it?
A. Yes, sir.
Q. *You don't pretend to say what month the child was born?*
A. *Oh, I couldn't do that; I know it was along some time.*

Anderson Johnson, a son-in-law of Cilla Brown, was also a witness. We submit that his testimony on direct examination is practically of no value as throwing any light upon the actual date of the birth of this child. He said that he was a medicine doctor at that time, an Indian doctor, and that they had sent for him to give Cilla some medicine. But on cross examination he was asked:

Q. Did you visit and give any other woman that had children born to them around in that neighborhood medicine at the time their children were born?

And he answered:

A. No. (Record., p. 72.)

Nor could this witness give any date with reference to any occurrence about which he was examined.

Q. Did you know when Cilla died?
A. I don't know when she died; I knew she was married again but I don't know about the time when she died.

Q. How long did Cilla live there at that place after Madison died?
A. I couldn't say just how long it was. (Rec., p. 71.)
Q. Did Madison Brown have another child born after Samuel H.? A. There was one but it died.
Q. When was it born?
A. I don't know, I never paid any attention. (Rec., p. 72.)

We have already directed the court's attention to the evidence given in this case by the appellant, C. R. Privett, in his various dealings with the defendants, and especially his several conversations with Cilla Brown, the mother of this child, Samuel. We now desire to direct the court's attention particularly to the testimony of Mr. George T. Brown, one of the attorneys of record in this case, and who has had more or less connection with the matters and things now in controversy for the past five or six years. It seems to us quite clear that to any mind not clouded in some degree by preconceived notions, his evidence, while not based upon any personal knowledge of the fact as to the birth of Samuel H. Brown, ought to be given a great deal of weight, and that it is of very much more value in arriving at the truth of the proposition than the character of evidence which made up the Government's case. Mr. Brown was employed by Privett in 1913 to bring suit to quiet the title to the land involved and instituted the suit in the Superior Court of Tulsa County, the judgment in which was fully discussed by us in the first division of this brief. It was his business to find out if he

could before bringing that suit what the facts were. The very great probability is that what he learned from Cilla Brown, the mother of the child, when she was brought to his office by Mr. Privett, represented the exact truth. He testified that she gave him the data of her family history and executed an affidavit embracing the facts which she related (Rec., p. 95). This affidavit is Defendant's Exhibit 5 and appears at pages 113 and 114 of the printed record, and contains, among other things, the statement "that the said Samuel H. Brown was born on the 23rd day of February, 1906." Note the following questions and answers:

Q. Mr. Brown, some of the things that are in this affidavit as I said just now are written in with a pen. I will ask you if looking at it, you recall whether or not the typewritten portion of it was prepared before Cilla came there to your office?

A. Yes, sir, as I recollect it, Mr. C. R. Privett had an affidavit which had been executed by Cilla prior to this time, and in my judgment it wasn't a full and complete statement of the family history as was necessary and with the aid of that affidavit I dictated this affidavit and the stenographer transcribed it and these dates that are blank in here didn't appear in the other affidavit as I recall and after she came in, why I got the information from her and filled in the dates.

Q. As to those things?

A. Yes, sir.

Q. With reference to the date of birth of Samuel H. Brown, that appears to have been written in there in typewriting?

A. That appeared in the original affidavit.

Q. *Did you interrogate her on that proposition when she was in your office?*

A. Yes, sir, I asked her about the facts, and that fact particularly because as I recall it that was a particular fact in issue.

And also the following:

Q. Were you present in court, Mr. Brown, when the suit that you have referred to was heard in the Superior Court?

A. Yes, sir, I represented the plaintiff, took the testimony.

Q. Did you hear Cilla Brown testify in that case?

A. Yes, sir, she testified and I heard it.

Q. What did she testify in that case?

A. She testified then the same facts that appear in this affidavit about the date of the birth of this child. (Rec., pp. 96-97.)

Upon this record, apart from a single circumstance which we shall presently mention, the weight of the testimony is so overwhelming in favor of the date of February 23rd and against the date of April 23rd, that it is almost inconceivable how the learned trial court could have arrived at the conclusion he did. The circumstance to which we allude is that it appears this child, Samuel H. Brown, was never enrolled, and never received any allotment. This, it is quite true, tends to support the theory of the Government that the child was born too late to be placed on the rolls, that is to say, at some date subsequent to March 4, 1906, but this is, after all, but presumptive evidence and of a very weak order at that. To people acquainted with the habits and customs of

these Indian folk of the status of the parents of this child, it is well known that they were not particularly diligent and attentive to this sort of thing. It is notorious that many of the full bloods who were grown men and women at the time of the closing of the rolls would never have gotten on the rolls at all but for the diligence and effort of the Dawes Commission in ascertaining about them and seeing to it that their names were placed on the rolls. There were many children of this class who were born in the spring of 1906 who were actually entitled to enrollment who never got on the rolls at all. Therefore it is not at all inconsistent with reasonable probability that the child, Samuel H. Brown, although entitled by reason of the date of his birth to both enrollment and allotment, failed of getting either on account of want of attention to the matter by his family and the want of knowledge of the Dawes Commission that there was any such person in being.

We have thus attempted to set before the court fairly and frankly the gist of the record in this case upon the disputed question of fact. We very confidently urge that not only was the judgment of the trial court contrary to the great weight of the evidence, but that it is unsupported by practically any evidence whatever, worthy of real consideration. On the other hand, there stand diametrically opposed to the trial court's conclusion the implications arising from the deeds of Cilla, Esther and Legus Brown in October of 1911; the solemn contemporaneous decla-

ration of Cilla and Esther Brown that Samuel H. Brown was born February 23, 1906; the proceedings in the County Court for approval of Cilla's deed; the proceedings in the County Court for sale of the minor's interest; the statements and testimony of Cilla Brown in 1913 in connection with the suit in the Superior Court of Tulsa County; the disclaimer of Esther Brown in 1913 of any further interest in the lands made with the knowledge and approval of the husband, Legus Brown, and George McDaniel, the District Agent, the latter being the duly appointed governmental representative to see that Indians having restricted lands were not deprived of the benefits of the restrictions; and last but by no means least that for four years prior to the discovery of oil the same parties and witnesses upon whom the Government now chiefly relies, by their every act and word, affirmed the contrary of their present assertion.

We therefore earnestly pray a reversal of this case on both the question of law and the question of fact presented, to the end that justice may prevail and innocent purchasers given that protection to which we cannot help believing they are both legally and equitably entitled.

Respectfully,

A. A. Davidson,
Preston C. West,
For Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

C. R. PRIVETT, JOHN O. MITCHELL, *and* J. E. Crosbie, *appellants*,
v.
THE UNITED STATES OF AMERICA, H. R. Wilcox, and Oil Production Company.
No. 236.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The United States brought suit in the United States District Court for the Eastern District of Oklahoma against W. E. Privett, C. R. Privett, H. R. Wilcox, Oil Production Company, John O. Mitchell, and J. E. Crosbie, to quiet and remove clouds from the title to a certain tract of land which was a part of the allotment of Madison H. Brown, a half-blood Creek Indian, and which had been designated and selected as a homestead by that Indian.

The allottee died in 1911, leaving as heirs his wife, Cilla Brown, a married daughter, Esther M. Brown, and a son, Samuel H. Brown. The bill alleged that

the son, Samuel H. Brown, was born on April 23, 1906.

The theory of the Government's bill was that as Samuel was born after March 4, 1906, this homestead land was inalienable and must be held for his support and benefit, under the requirement of section 9 of the Act of May 27, 1908, c. 199, 35 Stat 312, 315. That section provides:

> That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: *Provided further*, That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March fourth, nineteen hundred and six, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nineteen hundred and thirty-

> one, the land shall then descend to the heirs according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions: *Provided further*, That the provisions of section twenty-three of the act of April twenty-sixth, nineteen hundred and six, as amended by this act, are hereby made applicable to all wills executed under this section.

The mother and daughter deeded their interests in this land to W. E. Privett, and the mother as guardian of Samuel H. Brown executed a guardian's deed of the son's right. This last conveyance was confirmed by the County Court of Tulsa County. W. E. Privett deeded to C. R. Privett; the latter executed a lease to H. R. Wilcox, who assigned to the Oil Production Company. Thereafter C. R. Privett conveyed to John O. Mitchell and J. E. Crosbie. R. 3.

While he still held title to the land, under the conveyance executed by his brother W. E. Privett, C. R. Privett instituted a suit against Cilla, Esther, and Samuel H. Brown to quiet title to the land. This suit was brought in the Superior Court of Tulsa County, Oklahoma. Disclaimers were filed by Cilla and Esther, and a guardian *ad litem* was appointed for Samuel H. Brown. Upon the hearing of the case the Superior Court found that Samuel H. Brown was born February 23, 1906; that, therefore, the land was alienable, and title was in Privett. Decree was accordingly entered in favor of Privett quieting his title.

To the Government's bill the Oil Production Company and John O. Mitchell and J. E. Crosbie filed answers. R. 5–13. These answers were similar; denied that Samuel H. Brown was born after March 4, 1906, and alleged on the contrary that he was born February 23, 1906. After setting out the manner in which the several interests were acquired, the answers alleged that defendants acquired their interest as *bona fide* purchasers.

Thereafter Mitchell and Crosbie made supplemental answer (R. 16–18), setting up as *res judicata* the judgment of the Superior Court of Tulsa County in the suit to quiet title brought by C. R. Privett against these Indian heirs.

To this supplemental answer the United States filed a motion to strike (R. 18, 19), on the grounds that it did not state facts constituting a defense, that the judgment of the Superior Court was not a bar to the right of the United States to recover in this action, and for the reason that the United States was not a party to said suit in the Superior Court.

This motion was sustained. R. 19.

At the trial of the case the Government introduced testimony fixing the birth of Samuel H. Brown as April 23, 1906. Defendants sought to introduce the record of the proceedings in the Superior Court of Tulsa County in the suit to quiet title, but the same was rejected. R. 102–104.

As a result of the trial, the court found that Samuel H. Brown was born subsequent to March 4, 1906, and that the deeds and conveyances set up in the bill

of complaint were void. Judgment was accordingly entered in favor of the Government, canceling said conveyances and quieting the title in the heirs, as against all the defendants, except as to rights of the Oil Production Company under a lease which had been secured from the heirs and approved by the Secretary of the Interior since the institution of the suit. R. 20–22.

From this decree defendants C. R. Privett, John O. Mitchell and J. E. Crosbie appealed to the Circuit Court of Appeals, which affirmed the judgment of the District Court. R. 138. Opinion of the Court of Appeals, 136–138; 261 Fed. 351.

The appeal of these same defendants brings the case to this court.

Propositions.

Under the assignment of errors relied upon by appellants, two propositions only are presented—one, the correctness of the finding that Samuel H. Brown was born after March 4, 1906; the other, whether the judgment of the Superior Court of Tulsa County, Oklahoma, in the suit to quiet title, is *res judicata* in this case.

ARGUMENT.

I.

The evidence fully establishes that the minor child was born after March 4, 1906.

To support the allegation in its bill as to the time of the birth of Samuel H. Brown, the Government produced six witnesses, all of whom fixed the time

of Samuel's birth as in April, 1906, Legus Brown (R. 25), E. B. Maxey (R. 41, 42), Sallie Fleetwood (R. 45), Mrs. E. B. Maxey (R. 48), S. W. Brown (R. 51), Esther M. Brown (R. 53). Several of these witnesses fixed the time because of the fact that potatoes were being hoed or corn planted. Legus Brown and his wife, Esther Brown, brother-in-law and sister, respectively, of Samuel H., definitely fixed the date as April 23, 1906. A seventh witness, Anderson Johnson, testified (R. 70, 71) that he was called as an Indian doctor to prescribe at the time and he fixed it as the time of the "big summer." "According to Indians' way, when grass grows about that high [indicating] we call it big summer, and that was about the time." He was plowing when sent for.

The only evidence upon the part of defendants on this point is Defendants' Exhibits 2 and 4. R. 112, 113–116. Exhibit 2 is an affidavit which was executed October 24, 1911, in the office of W. E. Privett by Cilla Brown, mother, and Esther M. Brown, sister, of Samuel H., at the time they made deeds to Privett of their interests in this land. This affidavit, which was prepared by Privett, averred that Samuel was born February 23, 1906.

The circumstances regarding the execution of this affidavit are related in the testimony of Legus Brown (R. 37–40) and Esther M. Brown (R. 56–58, 59). It appears that these Indians were in Bixby, Oklahoma, to do some trading, and Privett sent a messenger to Cilla Brown, stating that he desired to see

her. She declined to go to see him, but after the second visit of the messenger she, with Esther, Legus, and Samuel H., went to the bank of which Privett was assistant cashier, and the proposition of selling the land was suggested by Privett. R. 58. Deeds were executed and the affidavit signed. The latter was drawn so as to include Legus, but he declined to sign it as the date of the birth was incorrect. Quite a controversy ensued. R. 37. Esther Brown stated in her testimony that the affidavit was not sworn to, nor were they told the effect of it. Privett told them "it was a paper so the deed could be approved, and he didn't tell us what it was." R. 55. She did not read it and Privett did not "explain it at all to us." The argument between Legus Brown and Privett over the date of the birth of Samuel was after Cilla and Esther had signed the affidavit. "They got in argument after everything was set aside." R. 57. (Testimony of Legus Brown, R. 37.)

Exhibit 4 (R. 113–118) in part consisted of an affidavit executed by Cilla Brown on January 9, 1913, in which she stated that Samuel H. Brown was born February 23, 1906. This affidavit was prepared by George T. Brown, the attorney retained by C. R. Privett to institute the quiet title suit in the State court. Cilla was brought to Mr. Brown's office after suit had been instituted, and signed the affidavit which had been prepared in Brown's office. (R. 95, 96.)

The other part of Exhibit 4 was the testimony of Cilla Brown at the trial of the suit to quiet title, wherein she stated that Samuel was born February 23, 1906. R. 114–117. This testimony was admitted and allowed to go into the case as a statement which Cilla Brown had made in relation to a fact being tried in the case. R. 101.

We submit that in view of the testimony in the record the District Court was justified and warranted in finding that Samuel H. Brown was born after March 4, 1906.

Moreover, where the evidence in a case is conflicting, an appellate court will not reverse a finding of fact by a chancellor merely upon a doubt created by such testimony. The finding of the trial court is presumptively correct, and unless some serious or important mistake has been made in the consideration of the evidence, the decree should be permitted to stand. If the evidence is fully adequate to justify the finding made by the court, though other unprejudiced minds might draw from it different conclusions, a reversal is not warranted; there should be strong proof that it is against the clear weight of the evidence. *Phila., Wil. & Balt. R. Co.* v. *Phila. & Havre de Grace Co.*, 23 How. 209, 219, 220; *Furrer* v. *Ferris*, 145 U. S. 132, 134; *Snider* v. *Dobson*, 74 Fed. 757, 758; *Roberts* v. *Roberts*, 223 Fed. 775, 776, certiorari denied, 239 U. S. 639; *Am. Rotary Valve Co.* v. *Moorehead*, 226 Fed. 202, 203, certiorari denied, 239 U. S. 641.

Furthermore, the finding of the District Court that Samuel H. Brown was born after March 4, 1906, was assigned as error upon the appeal to the Circuit Court of Appeals. Assignment of errors, fourth par., R. 129. Therefore it is a necessary inference that the Court of Appeals concurred in the finding of fact by the District Court as to the date of the birth of Samuel. In such a situation the well-settled rule is applicable that findings of fact concurred in by two lower courts will not be disturbed by this court unless shown to be clearly erroneous. *Washington Securities Co.* v. *United States*, 234 U. S. 76, 78; *Causey* v. *United States*, 240 U. S. 399, 401; *Baker* v. *Schofield*, 243 U. S. 114, 118.

II.

The judgment of the Superior Court of Tulsa County, Oklahoma, in the suit brought by Privett to quiet title to the land involved is not res judicata upon the United States.

By section 2 of the Act of April 26, 1906, c. 1876, 34 Stat. 137, it was provided:

> That for ninety days after approval hereof applications shall be received for enrollment of children who were minors living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee, or Creek Tribes, or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments shall be made to children so enrolled. * * *.

Section 9 of the Act of May 27, 1908, *supra*, which is the law upon which this suit is predicated, was passed to make provision for children who could not be enrolled by the Dawes Commission and thus share in the tribal property.

This same section was considered by this court in *Parker* v. *Riley*, 250 U. S. 66.

The language of this section is significant: "The homestead * * * shall remain inalienable, * * * for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one;" * * *.

In view of this clear declaration in the law as to the status of homestead allotments where the allottee died leaving minor children born after March 4, 1906, the United States has the power and authority to institute suit to vindicate its announced policy with respect to such lands. In so doing it exercises a governmental function. The maintenance of the restriction on the disposition of the homestead is distinctly an interest of the United States, and a violation of the restriction is not merely a violation of the proprietary rights of the minor Indians, but of the governmental rights of the United States. *Heckman* v. *United States*, 224 U. S. 413, 437, 438; *Bowling* v. *United States*, 233 U. S. 528, 534, 535.

In the *Bowling* case, wherein the Government brought suit to cancel conveyances of restricted Indian land, an attempt had been made to sustain as *res judicata* against the right of the Government to suc-

ceed in its suit, a judgment in a suit to which the United States was not a party.

This court, in disposing of that contention, said (pp. 534, 535):

> And it is no longer open to question that the United States has capacity to sue for the purpose of setting aside conveyances of lands allotted to Indians under its care, where restrictions upon alienation have been transgressed. Since the decision below, the precise question has been determined by this court in *Heckman* v. *United States*, 224 U. S. 413, and it was there held that the authority to enforce restrictions of this character is the necessary complement of the power to impose them. It necessarily follows that, as a transfer of the allotted lands contrary to the inhibition of Congress would be a violation of the governmental rights of the United States arising from its obligation to a dependent people, no stipulations, contracts, or judgments rendered in suits to which the Government is a stranger, can affect its interest. The authority of the United States to enforce the restraint lawfully created can not be impaired by any action without its consent. *Heckman* v. *United States*, *supra*, p. 445. If, therefore, the conveyance by the allottee's heirs, in the present case, would otherwise have been subject to cancellation, it was not saved by reason of the judgment entered in their suit against the purchaser.

In the light of these decisions, there can be no question that the rejection of the evidence of the proceedings in the suit in the State court by which Privett sought to quiet title to this land, was proper, as was the holding of the court that the judgment in that case was not binding upon the United States which was not a party thereto.

CONCLUSION.

The judgment of the Court of Appeals was right and should be affirmed.

Respectfully submitted.

LESLIE C. GARNETT,
Assistant Attorney General.
H. L. UNDERWOOD,
Special Assistant to the Attorney General.

MARCH, 1921.

○

Mr. Preston C. West, with whom *Mr. A. A. Davidson* was on the brief, for appellants.

Mr. Assistant Attorney General Garnett, with whom *Mr. H. L. Underwood*, Special Assistant to the Attorney General, was on the brief, for appellees.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

The United States brought this suit to cancel conveyances made by the heirs of a Creek Indian of land allotted to him as a homestead out of the Creek tribal lands. After answer and hearing the District Court granted the relief sought and the Circuit Court of Appeals affirmed the decree. 261 Fed. Rep. 351.

The allottee was an Indian of the half blood and died intestate in 1911 leaving as his heirs a widow, an adult daughter and a minor son, all of whom were Creek Indians. Thereafter deeds purporting to convey the land to one Privett were executed by the heirs, the deed of the minor son being made by his guardian. These are the conveyances sought to be canceled, and the ground on which they are assailed is that the minor son was born after March 4, 1906, and therefore that the land passed to the heirs subject to the qualification and restriction imposed by a proviso in § 9 of the Act of May 27, 1908, c. 199, 35 Stat. 312, which declares:

"That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March fourth, nineteen hundred and six, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until

April twenty-sixth, nineteen hundred and thirty-one; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nineteen hundred and thirty-one, the land shall then descend to the heirs," etc.

The minor son is still living and, if he was born after March 4, 1906, it is conceded that the heirs took the land subject to the qualification and restriction imposed by the proviso (see *Parker* v. *Riley*, 250 U. S. 66), that there was no removal of the restriction by the Secretary of the Interior, and that the conveyances made by the heirs are void. But it is urged, first, that the evidence produced at the hearing shows that the minor son was born before, and not after, March 4, 1906, and, secondly, that, in any event, it was settled conclusively in a prior suit that he was born February 23, 1906.

The District Court found that the date of the son's birth was April 23, 1906, and the Circuit Court of Appeals acquiesced in that finding without particularly discussing the point in its opinion. The evidence has been examined and in our opinion it amply supports the finding.

The reliance on the decision in the prior suit is ill-founded. That suit was between the heirs and one who was claiming under these conveyances, the United States not being a party, and the decree therein pronounced the conveyances valid. This suit is brought by the United States in virtue of its interest in maintaining the restriction and safeguarding the Indians in the possession and enjoyment of the lands allotted out of the tribal domain. As yet the Indians have not been fully discharged from the guardianship of the United States. "During the continuance of this guardianship, the right and duty of the Nation to enforce by all appropriate means the restrictions designed for the security of the Indians cannot

be gainsaid. While relating to the welfare of the Indians, the maintenance of the limitations which Congress has prescribed as a part of its plan of distribution is distinctly an interest of the United States." *Heckman* v. *United States*, 224 U. S. 413, 437. See also *La Motte* v. *United States*, 254 U. S. 570. "And it is no longer open to question that the United States has capacity to sue for the purpose of setting aside conveyances of lands allotted to Indians under its care, where restrictions upon alienation have been transgressed. . . . Authority to enforce restrictions of this character is the necessary complement of the power to impose them. It necessarily follows that, as a transfer of the allotted lands contrary to the inhibition of Congress would be a violation of the governmental rights of the United States arising from its obligation to a dependent people, no stipulations, contracts, or judgments rendered in suits to which the Government is a stranger, can affect its interest." *Bowling* v. *United States*, 233 U. S. 528, 534–535. As the United States is here suing in its own interest, it is in no wise concluded by any matter, whether of fact or law, that may have been adjudged in the prior suit to which it was not a party.

Decree affirmed.

PRIVETT ET AL. *v.* UNITED STATES ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 236. Argued March 18, 1921.—Decided April 18, 1921.

1. A homestead allotment of a half-blood Creek Indian, who died intestate leaving surviving issue, a member of the tribe, born since March 4, 1906, remains inalienable under § 9 of the Act of May 27, 1908, c. 199, 35 Stat. 312, during the lifetime of such issue, until April 26, 1931, if the Secretary of the Interior has not removed the restriction; and a deed made by the heirs in such circumstances is void. P. 203.
2. A finding that a surviving son of a Creek allottee was born since March 4, 1906, *held* sustained by the evidence. P. 203.
3. In a suit to set aside deeds of an Indian allotment made by the heirs of the allottee in contravention of a restriction on alienation imposed by Congress, wherein the validity of the conveyances depended on the date of the birth of a surviving minor son of the allottee, *held* that the United States was in no respect concluded by a finding of the date and a judgment upholding the conveyances, in a prior suit in the state court between the heirs and one claiming under the conveyances, to which suit the United States was not a party. P. 203.

261 Fed. Rep. 351, affirmed.

THE case is stated in the opinion.